

Exhibit 89



experience does matter

**CASE: In re: Pharmaceutical Industry Average Wholesale Price
Litigation**

DATE: March 31, 2008

Enclosed is the Original of the transcript of the testimony of **Michael Sellers** along with the errata sheet in the above-titled case. Please have the witness read the deposition and sign the signature page before a Notary Public.

After the signature page has been notarized, please return the original transcript and errata sheets to the custodial attorney within 30 days of receipt for proper filing.

Thank you for your attention to this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Henderson Legal Services

Encl.

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
_____) Volume II

Continued Videotaped Rule 30(b)(6)
Deposition of MICHAEL SELLERS, at
77 West Wacker Drive, Chicago,
Illinois, commencing at 9:00 a.m.
On Monday, March 31, 2008, before
Donna M. Kazaitis, RPR, CSR
No. 084-003145.

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<p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 FOR THE UNITED STATES:</p> <p>4 U.S. DEPARTMENT OF JUSTICE</p> <p>5 CIVIL DIVISION</p> <p>6 BY: MS. ANN ST. PETER-GRIFFITH</p> <p>7 99 N.E. 4th Street</p> <p>8 Miami, Florida 33132</p> <p>9 (305) 961-9003</p> <p>10 ann.st.peter-griffith@usdoj.gov</p> <p>11</p> <p>12 FOR THE RELATOR VEN-A-CARE OF THE FLORIDA</p> <p>13 KEYS, INC.:</p> <p>14 ANDERSON LLC</p> <p>15 BY: MR. C. JARRETT ANDERSON</p> <p>16 208 West 14th Street, Suite 3-B</p> <p>17 Austin, Texas 78701</p> <p>18 (512) 469-9191</p> <p>19 jarrett@anderson-llc.com</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 INDEX</p> <p>2</p> <p>3 Monday, March 31, 2008</p> <p>4</p> <p>5 WITNESS EXAMINATION</p> <p>6</p> <p>7 MICHAEL SELLERS</p> <p>8 (By Ms. St. Peter-Griffith) 339</p> <p>9 (By Mr. Anderson) 505</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 FOR ABBOTT LABORATORIES:</p> <p>4 JONES DAY</p> <p>5 BY: MS. TINA TABACCHI</p> <p>6 77 West Wacker Drive</p> <p>7 Chicago, Illinois 60601-1692</p> <p>8 (312) 782-3939</p> <p>9 ttabacchi@jonesday.com</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 Anthony Micheletto, Videographer</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 INDEX OF EXHIBITS PAGE</p> <p>2 Exhibit Sellers 016, 9/30/99 DOJ letter 355</p> <p>3 Exhibit Sellers 017, ABT 212051 - 055 357</p> <p>4 Exhibit Sellers 018, ABT 212056 - 076 367</p> <p>5 Exhibit Sellers 019, ABT-DOJ-E 0048483 377</p> <p>6 Exhibit Sellers 020, MHA007852 - 859 380</p> <p>7 Exhibit Sellers 021, TXABT 38667 386</p> <p>8 Exhibit Sellers 022, ABT 001002 - 010 389</p> <p>9 Exhibit Sellers 023, BR 02391 - 440 391</p> <p>10 Exhibit Sellers 024, ABT-DOJ 0150044 449</p> <p>11 Exhibit Sellers 025, ABT 00661 450</p> <p>12 Exhibit Sellers 026, TXABT 675824 - 112 497</p> <p>13 Exhibit Sellers 027, ABT-DOJ-E 0396008 - 011 525</p> <p>14 Exhibit Sellers 028, TXTABT-E 0621602 - 604 527</p> <p>15 Exhibit Sellers 029, ABT-DOJ 0233994 530</p> <p>16 Exhibit Sellers 030, ABT 006248 543</p> <p>17 Exhibit Sellers 031, TXABT 50057 548</p> <p>18 Exhibit Sellers 032, TXABT 158513 620</p> <p>19 Exhibit Sellers 033, TXABT 674736, 741, 742,</p> <p>20 738 630</p> <p>21 Exhibit Sellers 034, TXABT 674725 - 726 658</p> <p>22 Exhibit Sellers 035, TXABT 674744 662</p>

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<p>1 INDEX OF EXHIBITS PAGE</p> <p>2 Exhibit Sellers 036, TXABT 61252 - 254 662</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 like to put on the record that Jarrett Anderson</p> <p>2 will be here for the realtor. He's flying in this</p> <p>3 morning and he'll be a little late.</p> <p>4 THE VIDEOGRAPHER: The Court Reporter</p> <p>5 today is Donna Kazaitis from Henderson Legal</p> <p>6 Services of Washington, D.C.</p> <p>7 Please swear in the witness.</p> <p>8 MICHAEL SELLERS,</p> <p>9 having been duly resworn, was examined and</p> <p>10 testified as further follows:</p> <p>11 EXAMINATION</p> <p>12 (Resumed)</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Good morning, Mr. Sellers.</p> <p>15 A. Good morning.</p> <p>16 Q. On this fine March 31st day.</p> <p>17 A. Always the best weather for these.</p> <p>18 Q. Mr. Sellers, since we were here the last</p> <p>19 time, have you done anything to prepare for your</p> <p>20 30(b)(6) testimony?</p> <p>21 A. I did review a few of the transcripts of</p> <p>22 other depositions, and I spent some time preparing</p>
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<p>1 THE VIDEOGRAPHER: This is Anthony</p> <p>2 Micheletto representing Henderson Legal Services.</p> <p>3 I am the operator of this camera. This is the</p> <p>4 videotaped deposition of Mike Sellers as being</p> <p>5 taken pursuant to Federal Rules of Civil Procedure</p> <p>6 on behalf of the plaintiffs.</p> <p>7 We are on the record on March 31,</p> <p>8 2008. The time is 9:08 a.m. as indicated on the</p> <p>9 video screen.</p> <p>10 We are at the offices of Jones Day,</p> <p>11 77 West Wacker Drive, Chicago, Illinois. The case</p> <p>12 is captioned In Re: Pharmaceutical Industry</p> <p>13 Average Wholesale Price Litigation, Case No.</p> <p>14 01-12257-PBS.</p> <p>15 Will the attorneys please identify</p> <p>16 themselves for the video record.</p> <p>17 MS. ST. PETER-GRIFFITH: Ann</p> <p>18 St. Peter-Griffith, United States Attorney's</p> <p>19 Office on behalf of the United States.</p> <p>20 MS. TABACCHI: Tina Tabacchi on behalf</p> <p>21 of the defendant.</p> <p>22 MS. ST. PETER-GRIFFITH: And I'd just</p>	<p>1 with my attorney.</p> <p>2 Q. How long did you prepare -- is that</p> <p>3 Ms. Tabacchi?</p> <p>4 A. Yes.</p> <p>5 Q. How long did you spend preparing with</p> <p>6 her?</p> <p>7 A. A couple of hours.</p> <p>8 Q. When was that?</p> <p>9 A. I believe it was last Thursday.</p> <p>10 Q. Did you confer with anyone other than</p> <p>11 Ms. Tabacchi?</p> <p>12 A. No.</p> <p>13 Q. Which deposition transcripts did you</p> <p>14 review?</p> <p>15 A. Well, I take that back. Carol Geisler</p> <p>16 from Jones Day was also in there for a short</p> <p>17 period of time.</p> <p>18 I'm sorry. Your question was?</p> <p>19 Q. You indicated that you also reviewed a</p> <p>20 few transcripts.</p> <p>21 A. Yes.</p> <p>22 Q. Whose transcripts did you review?</p>

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<p style="text-align: right;">Page 341</p> <p>1 A. Harry Adams, Mike Heggie, Deborah 2 Longley. There was one other one. 3 MS. ST. PETER-GRIFFITH: Go ahead, if 4 you want to help him out, Tina. 5 MS. TABACCHI: Dennis Walker. 6 THE WITNESS: Dennis Walker, yes. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Did you review the entire transcripts? 9 A. I went through sections of them, yes. 10 But I had the whole transcripts available to me. 11 Q. Why did you choose to go through the 12 sections that you went through? 13 A. Again, I was trying to touch on all the 14 subjects that were listed for my corporate 15 testimony. 16 Q. Did you do that by going back to the 17 index, as you testified before you did with prior 18 transcripts? 19 A. Yes. I began with the index, and then I 20 may have read on beyond just the specific 21 paragraphs that had the keywords in them. 22 Q. Understood.</p>	<p style="text-align: right;">Page 343</p> <p>1 about my conversation with Rick Gonzalez. 2 Q. Okay. 3 A. And I believe I talked about covering 4 three subjects. There were in fact four subjects 5 covered in that conversation that I was reminded 6 of as I went through this process. 7 The fourth subject was did Rick 8 have any recollection of the DOJ AWP's, and his 9 response was no, he had no recollection of those 10 at all. 11 Q. Was that a question that you asked him 12 or that Ms. Tabacchi asked him? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: It was a question asked by 15 a Jones Day attorney. It was not Ms. Tabacchi. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Who was the Jones Day lawyer? 18 A. Jim Daly. 19 Q. When you were on the phone with 20 Mr. Gonzalez, who was present? 21 A. Rick Gonzalez, myself -- 22 Q. On the phone?</p>
<p style="text-align: right;">Page 342</p> <p>1 Did you review any exhibits to 2 these transcripts? 3 A. I reviewed a few documents, but I don't 4 recall exactly which ones they were. 5 Q. Were they exhibits to these transcripts? 6 A. Yes, yes. 7 Q. Do you remember whose transcripts they 8 were exhibits to? 9 A. No, because I jumped around as we were 10 looking at exhibits. 11 Q. When did you do these reviews? 12 A. I looked at some of the documents last 13 Thursday with the attorneys and then I reviewed 14 the transcripts this past weekend. 15 Q. Did you review your transcript of the 16 first day of this deposition? 17 A. No. I did not. 18 Q. As you sit here today, sir, is there any 19 testimony that you gave on the first day of your 20 30(b)(6) deposition that you would like to clarify 21 or change or expand upon? 22 A. There is one thing, that is we talked</p>	<p style="text-align: right;">Page 344</p> <p>1 MS. TABACCHI: Object to the form. Go 2 ahead. 3 THE WITNESS: Yeah, on the phone. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Okay. 6 A. Myself, Rick Gonzalez, Jim Daly from 7 Jones Day, and Sara Lyke from Abbott Laboratories. 8 Q. Anybody else? 9 A. No. 10 Q. Did you personally ask any questions of 11 Mr. Gonzalez? 12 A. I did not. 13 Jim Daly asked me at the end of the 14 conversation if I had any questions for Rick, I 15 said I did not. 16 Q. Why didn't you have any questions? 17 A. Because I thought he had answered all of 18 the issues that were relevant to this, my 19 testimony. 20 Q. So you didn't see any need to ask any 21 further questions of him? 22 A. No.</p>

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<p>1 Q. Do you know what Mr. Gonzalez's role was</p> <p>2 in setting prices, either contract prices or</p> <p>3 catalog list prices?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Starting in I believe '97,</p> <p>6 '98, I'm not sure when he took over as the</p> <p>7 president of Hospital Products Division, he was</p> <p>8 responsible for the whole division. He was</p> <p>9 responsible for approving any catalog price</p> <p>10 changes, but he wasn't involved in the actual</p> <p>11 setting of the prices themselves.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Did you see the need to discuss with</p> <p>14 Mr. Gonzalez anything else concerning his</p> <p>15 involvement with the Hospital Products Division?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Why not?</p> <p>20 MS. TABACCHI: Objection, asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: I had personal knowledge</p>	<p>1 covered the topics adequately with him.</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Sir, when we left off at your last</p> <p>5 deposition, we were still working through Topic 8</p> <p>6 and pricing.</p> <p>7 A. Okay.</p> <p>8 Q. I'd like to go back to that.</p> <p>9 Before I show you some documents,</p> <p>10 I'd like to ask in terms of setting of pricing,</p> <p>11 either list pricing or contract pricing, either</p> <p>12 or, okay, so any pricing that impacted the</p> <p>13 Alternate Site customers or the nonDRG reimbursed</p> <p>14 customers.</p> <p>15 A. Okay. For Alternate Site.</p> <p>16 Q. For HPD customers who are not DRG</p> <p>17 reimbursed. Does that make sense?</p> <p>18 A. Okay.</p> <p>19 Q. What role, if any, did factors like</p> <p>20 dispensing fees or copays or other risks that the</p> <p>21 provider might have impact Abbott's pricing</p> <p>22 decisions?</p>
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<p>1 of a number of things. And what I was looking for</p> <p>2 in the conversation with Mr. Gonzalez was his</p> <p>3 perspective on a few items, not necessarily the</p> <p>4 details of the transactions that were going on or</p> <p>5 whatever.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Well, how about just the subject matters</p> <p>8 that are at issue in today's deposition, did you</p> <p>9 feel the need to review with him the various</p> <p>10 topics set forth in your deposition Notice?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Again, I thought the</p> <p>13 questions that were asked touched on the subjects</p> <p>14 that we needed to talk about.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Do you think it would have been</p> <p>17 important as the president of HPD to get</p> <p>18 Mr. Gonzalez's perspective on the topics that are</p> <p>19 at issue in this 30(b)(6) lawsuit?</p> <p>20 MS. TABACCHI: Object to the form,</p> <p>21 beyond the scope of the Notice.</p> <p>22 THE WITNESS: Again, I thought we</p>	<p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I don't believe that any</p> <p>3 of those affected or were factors in our pricing</p> <p>4 decisions.</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Why not?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: Again, as I think I said</p> <p>10 the last time, we marketed our products on the</p> <p>11 basis of quality, breadth of portfolio, breadth of</p> <p>12 delivery systems available, dependability of</p> <p>13 supply, and on competitive prices.</p> <p>14 So we were more intent on looking</p> <p>15 at what our competitors were offering, not</p> <p>16 necessarily what happened with the drugs after</p> <p>17 they were procured.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Well, as part of the competitive</p> <p>20 pricing, would it have been important to</p> <p>21 understand for those end users, those end</p> <p>22 providers, would it have been important for Abbott</p>

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<p style="text-align: right;">Page 349</p> <p>1 to understand what costs they had to consider as 2 through their business? 3 MS. TABACCHI: Object to the form, 4 beyond the scope. 5 THE WITNESS: Well, while it's always 6 important to understand your customer and what 7 drives their or what gives them motivation, 8 whatever they did to process our products was the 9 same they were going to do when they processed 10 somebody else's products. Ours were no different. 11 The only place where there was a 12 difference was where we had a delivery system that 13 would have obviated a certain process that they 14 would have had to do. 15 For instance, if we were selling a 16 pre-filled syringe product, that product could be 17 priced higher than just a vial or ampule product 18 because it eliminated steps that the provider had 19 to go through to draw up the syringe and so on. 20 So from that standpoint, it was 21 important to understand. But if they bought a 22 vial of a certain drug from us and they bought a</p>	<p style="text-align: right;">Page 351</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: The only other factor that 3 plays here is the size of the customer in terms of 4 what does the customer buy from Abbott or what 5 could the customer buy from Abbott. 6 So if, for instance, it was a large 7 GPO that brought to us two thousand members that 8 would then buy our products, they might be 9 eligible for a lower price than an individual 10 coming to us with two or three, four, or five 11 locations that might buy our drugs. 12 So the critical mass of the 13 customer may have played some role in the price 14 considerations at times. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Would it have been the contract price 17 considerations or the list price considerations or 18 both? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: Purely contract. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. How did Abbott's marketing of product</p>
<p style="text-align: right;">Page 350</p> <p>1 vial of a certain drug, of that same drug, from 2 one of our competitors, they'd have to go through 3 the same processes to prepare the drug, administer 4 the drug, whatever else needed to go on. 5 So we really didn't take that into 6 consideration because it was really what did we 7 need to remain competitive with other drug 8 suppliers on that drug. 9 Q. Did dispensing fees for the end 10 providers ever factor into Abbott's pricing 11 decisions? 12 A. No. 13 Q. What about inventory carrying costs for 14 the end user providers, did that ever factor into 15 Abbott's pricing decisions? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: No. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Other than just the competitive price of 20 the actual product itself, was there any other 21 factor pertaining to the provider that factored 22 into Abbott's pricing decisions?</p>	<p style="text-align: right;">Page 352</p> <p>1 lines, meaning packaging more than just one 2 individual product, how did that impact pricing 3 for Abbott's individual products, if at all? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: Usually not in the subject 6 drugs that we're talking about here. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Okay. 9 A. Primarily because the awards that would 10 be made by a GPO for instance often times ended up 11 being line item awards. They weren't we're going 12 to give you every product that you bid, we're 13 going to give you, you know, instead they'd come 14 back and say no, we're going to give you a hundred 15 twenty out of the three hundred fifty products 16 that you bid we're going to give those to you and 17 we're going to give somebody else the other two 18 hundred some odd. 19 So it never was a practice to try 20 to link them together because we knew that our 21 customers, which were primarily pharmacists, not 22 professional purchasers, they liked to do a pick</p>

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<p style="text-align: right;">Page 353</p> <p>1 and choose across the awards. So you really had 2 to price each one so it would stand alone. 3 Q. So, for example, in the example that you 4 just gave for those a hundred twenty or so line 5 items, would it be price that would be the 6 determining factor as to whether or not Abbott 7 would receive the contract from the GPO with 8 regard to those items? 9 MS. TABACCHI: Object to the form, 10 beyond the scope. 11 THE WITNESS: It was one of the factors. 12 I mean all things I said before in terms of 13 dependability, in terms of quality, in terms of 14 delivery mode would contribute to their decision. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Let me ask you a slightly different way. 17 Would it be the prices on the 18 individual line items that would be awarded, for 19 example the hundred twenty that you referenced, as 20 opposed to the entire package or portfolio of the 21 product line that would be the driving factor? 22 MS. TABACCHI: Object to the form,</p>	<p style="text-align: right;">Page 355</p> <p>1 environment. So if CPIU, a lot of our contracts 2 are geared to whatever the CPIU does in terms of 3 our ability to increase prices. So that would be 4 another factor in determining contract price. And 5 as I've said before, in the 1990s it was a factor 6 for list price changes as well. 7 (WHEREUPON Exhibit Sellers 016 8 was marked as of 3/31/2008.) 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Sir, I'm not going to ask you detailed 11 questions about this document. I'm going to ask 12 Abbott whether it recognizes the document, but 13 we're not going to go line-by-line. (Document 14 tendered to the witness.) 15 MS. TABACCHI: Object to the question as 16 beyond the scope of the Notice. 17 THE WITNESS: I don't remember reviewing 18 this particular document. 19 BY MS. ST. PETER-GRIFFITH: 20 Q. Sir, previously we had discussed in the 21 first day of your deposition various pressures 22 that may have influenced Abbott's decision making</p>
<p style="text-align: right;">Page 354</p> <p>1 beyond the scope. 2 THE WITNESS: My experience is that it 3 was the individual price for that individual line 4 item that was awarded. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Were there any other factors that 7 factored other than what you already testified to 8 this morning and earlier that factored into 9 Abbott's pricing decisions? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: No. The one other one, I 12 guess I back, the one other one we talked about 13 before is inflationary environment of the year 14 that we were in. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. What do you mean by that? 17 A. Well, we monitored the CPI bundle for 18 urban, CPIU is what we called it, I think that's 19 what it's called on the government website. 20 We monitored CPIU. So we were 21 aware whether we were in a high inflationary 22 environment or we were in a low inflationary</p>	<p style="text-align: right;">Page 356</p> <p>1 with regard to lowering its list pricing. Do you 2 recall that? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: Yeah. I believe we talked 5 about a number of environmental factors that were 6 going on at the time. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. In 1999 I'll represent to you this is a 9 letter that was sent to by the Department of 10 Justice to Abbott's counsel, Daniel Reidy. 11 Did Abbott see a copy of this 12 document? 13 MS. TABACCHI: Object to the form, 14 object as beyond the scope of the Notice. 15 THE WITNESS: I can't comment because I 16 didn't see it. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Why didn't Abbott consider lowering its 19 list prices upon receipt of this letter? 20 MS. TABACCHI: Object to the form, 21 beyond the scope of the Notice. This is an 22 improper hypothetical.</p>

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<p>1 MS. ST. PETER-GRIFFITH: It's not a 2 hypothetical. I'm asking why it didn't do it. 3 MS. TABACCHI: Same objections. 4 THE WITNESS: Again, I'm not familiar 5 with when this came out and who saw it. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Did you do anything in preparation for 8 today's deposition to evaluate DOJ communications 9 with Abbott? 10 A. No. 11 (WHEREUPON Exhibit Sellers 017 12 was marked as of 3/31/2008.) 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Sir, what has been marked as Exhibit 17 15 I'll represent to you was previously used at the 16 deposition of Don Robertson. (Document tendered 17 to the witness.) 18 We're going to focus on the first 19 two pages of this document. My first question to 20 you is do you recognize this document? 21 A. Can I read it? 22 Q. Sure.</p>	<p>1 what it is so that we can reach some agreement. 2 Because just simply putting this letter in front 3 of him I don't see how it fits into the topics. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Well, I'll ask the questions. 6 A. I've read the first two pages. 7 Q. Does this refresh your recollection as 8 to whether or not Abbott had an understanding 9 about how AWP factored into Medicare and Medicaid 10 reimbursement? 11 MS. TABACCHI: Object to the form, 12 beyond the scope. 13 MS. ST. PETER-GRIFFITH: It's not beyond 14 the scope. 15 THE WITNESS: No, not really. 16 I think in my response originally 17 about the understanding of AWP and reimbursement, 18 I said as a matter of course and in general HPD 19 part of Abbott Laboratories was not aware of a 20 relationship of AWP to reimbursement. 21 There were a few people that may 22 have been aware of it at points in time, but as a</p>
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<p>1 MS. TABACCHI: Can I ask what topic you 2 see this as falling into? 3 MS. ST. PETER-GRIFFITH: Sure, a variety 4 of them. Certainly 8, 11, 9, 4, and it follows on 5 his prior testimony too as well pertaining to 6 Topic 8. 7 MS. TABACCHI: Object to the question as 8 beyond the scope. This letter has also been 9 addressed by a separate 30(b)(6) witness. 10 MS. ST. PETER-GRIFFITH: Which 30(b)(6) 11 witness? 12 MS. TABACCHI: This fell into the Cindy 13 Sensibaugh lobbying testimony. 14 I'm just having trouble seeing how 15 it fits into the topics for Mr. Sellers, but he 16 can answer in his individual capacity if he's 17 familiar with it. 18 MS. ST. PETER-GRIFFITH: Well, I need 19 him to answer on behalf of Abbott because he made 20 representations on behalf of Abbott and I'm going 21 to follow up. 22 MS. TABACCHI: Why don't you articulate</p>	<p>1 general course, no, there weren't, there wasn't a 2 widespread understanding of AWP and reimbursement, 3 especially on the hospital side. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Well, who's Mr. Dempsey? 6 A. Bill Dempsey at this time was the 7 general manager for Home Infusion Services. 8 Q. And Mr. Robertson? 9 A. Don Robertson was vice president of 10 Alternate Site. 11 Q. So certainly someone within Alternate 12 Site had this understanding; is that fair? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: There were some people 15 within Alternate Site that had some understanding 16 of AWP and a general relationship it may have had 17 to reimbursement. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Did Abbott Alt. Site or anyone within 20 Abbott HPD have a concern in 1991 about changes to 21 Medicare or Medicaid reimbursement formulas? 22 MS. TABACCHI: Object to the form,</p>

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<p style="text-align: right;">Page 361</p> <p>1 beyond the scope.</p> <p>2 THE WITNESS: I don't read this into</p> <p>3 that letter, I don't read that in here.</p> <p>4 What I see and what I remember of</p> <p>5 Virginia Tobiason's testimony, and I believe she</p> <p>6 testified with regard to this document because I</p> <p>7 remember some quotes being used in the, I didn't</p> <p>8 review the document but I remember some quotes</p> <p>9 being used in the deposition, this was more a</p> <p>10 review of hey, these things are being talked about</p> <p>11 and here are the effects it could have on the</p> <p>12 industry in general and that HCFA was seeking</p> <p>13 comments on a proposed rule, which they did all</p> <p>14 the time, or quite often, and a contemplation of</p> <p>15 what kind of comments we might support going back</p> <p>16 through any industry groups we were in at the time</p> <p>17 and/or possibly support on a correct basis if we</p> <p>18 wanted to.</p> <p>19 So I don't see anything in here</p> <p>20 that says there's concern. It's more of as a</p> <p>21 participant in the industry how can we help and</p> <p>22 provide constructive input.</p>	<p style="text-align: right;">Page 363</p> <p>1 Abbott Hospital Products Division with regard to</p> <p>2 the subject drugs ever consider waste, breakage,</p> <p>3 inventory costs, drug procurement costs, or bad</p> <p>4 debt as part of its pricing considerations?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Why would Abbott care about that?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 beyond the scope of the Notice.</p> <p>11 THE WITNESS: Again, the context of this</p> <p>12 is these are some comments that we might use or</p> <p>13 might support. So it was really a statement of</p> <p>14 looking at it from, at this issue, from a provider</p> <p>15 point of view, this is some things that we might</p> <p>16 want to represent.</p> <p>17 It had nothing to do with this is</p> <p>18 something that we ought to include in our pricing.</p> <p>19 It had nothing to do with this is something that</p> <p>20 we ought to go out and talk to our customers</p> <p>21 about.</p> <p>22 It was purely a discussion of hey,</p>
<p style="text-align: right;">Page 362</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Did Abbott provide constructive input?</p> <p>3 MS. TABACCHI: Object to the form,</p> <p>4 beyond the scope of the Notice.</p> <p>5 Again, this is duplicative of</p> <p>6 testimony that's already been provided on behalf</p> <p>7 of the corporation as to this particular document</p> <p>8 and this particular regulation.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. If you can turn to Page 2, at the top</p> <p>12 there's a bullet that says "Actual drug costs are</p> <p>13 not the only cost to be considered when</p> <p>14 establishing a drug fee screen." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. "Others include waste, breakage,</p> <p>17 inventory costs, and drug procurement costs. Also</p> <p>18 bad debt needs to be considered since Medicare</p> <p>19 only covers eighty percent of the drug cost." Do</p> <p>20 you see that?</p> <p>21 A. Yes.</p> <p>22 Q. In making its pricing decisions, did</p>	<p style="text-align: right;">Page 364</p> <p>1 these are some points that in this case Virginia</p> <p>2 did not see in the proposed rule that might be</p> <p>3 worthwhile to bring forward.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Why would the methodology by which</p> <p>6 Medicare and Medicaid reimbursed providers have</p> <p>7 any significance to Abbott Alternate Site?</p> <p>8 MS. TABACCHI: Object to the form,</p> <p>9 beyond the scope, asked and answered.</p> <p>10 THE WITNESS: Again, we were a member of</p> <p>11 the general industry, the healthcare industry.</p> <p>12 Whether we went forward with these thoughts or any</p> <p>13 of these, I don't know. But we saw ourselves as</p> <p>14 members of the industry.</p> <p>15 So if CMS or HCFA was asking for</p> <p>16 comments, often times they wanted to hear from</p> <p>17 every stakeholder in the industry. They didn't</p> <p>18 just want to hear from the stakeholders that were</p> <p>19 affected.</p> <p>20 So we saw ourselves as a</p> <p>21 responsible member of that community, and in</p> <p>22 particular in representing or as participating</p>

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<p style="text-align: right;">Page 365</p> <p>1 with our industry group's we saw that as a 2 responsibility we had to at least put our thoughts 3 out there. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Other than the individuals listed on 6 this memorandum, are you aware of anyone else 7 within the Hospital Products Division who had 8 familiarity with AWP as a basis for Medicare and 9 Medicaid reimbursement? 10 MS. TABACCHI: Object to the form, 11 beyond the scope. 12 THE WITNESS: I think, again, as I've 13 said before, I think that the folks that were in 14 Home Infusion reimbursement on a state-by-state 15 basis were aware of what some of the carriers or 16 payors were using as a factor, but that was only 17 thirty or forty people out of seventeen thousand. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Did Abbott have an understanding about 20 whether or not AWP was an indicator of actual, a 21 good indicator, of actual acquisition cost? 22 MS. TABACCHI: Object to the form,</p>	<p style="text-align: right;">Page 367</p> <p>1 a contract basis what the baseline was. Whether 2 it was up or down from that baseline when the 3 final product was sold to the provider we didn't 4 know. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. But did Abbott have an understanding as 7 to whether or not AWP was reflective of the actual 8 prices in the marketplace? 9 MS. TABACCHI: Object to the form, 10 beyond the scope of the Notice. 11 THE WITNESS: No. 12 (WHEREUPON Exhibit Sellers 018 13 was marked as of 3/31/2008.) 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Sir, I'm only going to ask you about the 16 first page of this particular document. (Document 17 tendered to the witness.) 18 A. Okay. 19 Q. Sir, do you recognize this document? 20 MS. TABACCHI: Object to the form of the 21 question, beyond the scope of the Notice. 22 This document and this area has</p>
<p style="text-align: right;">Page 366</p> <p>1 beyond the scope of the Notice. 2 MS. ST. PETER-GRIFFITH: It's not beyond 3 the scope. 4 THE WITNESS: When a noncontracted 5 entity, noncontracted, someone that did not have a 6 contract with Abbott, bought product through a 7 wholesaler, we had no way of knowing what the 8 wholesaler sold our product for. We didn't know 9 whether they sold it for the price they acquired 10 it, whether they sold it for list price, or 11 whether they sold it for some markup above list 12 price. 13 So the only place where we knew 14 where what the acquisition price was for somebody 15 buying something through the wholesaler was where 16 we had a contract with that end provider and we 17 had some assurance, though not perfect knowledge, 18 but some assurance, that they were paying our 19 contracted price and we were getting a charge-back 20 from that wholesaler to make that price real. 21 We weren't aware of what they were 22 paying in terms of wholesaler fees. So we knew on</p>	<p style="text-align: right;">Page 368</p> <p>1 already been the subject of corporate testimony by 2 another witness. 3 THE WITNESS: No. I'm not familiar with 4 this document. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. In 1991 -- first of all, who is 7 Mr. Kringel? 8 A. He was the president of our Hospital 9 Products Division. 10 Q. In 1991 did Abbott's Hospital Products 11 Division have an understanding as to whether AWP 12 was a poor indicator of actual drug acquisition 13 costs? 14 MS. TABACCHI: Object to the form, 15 beyond the scope of the Notice. 16 THE WITNESS: I would say from this it 17 doesn't sound like something Don Robertson would 18 say, but it is under his signature, so I would say 19 maybe Don Robertson had that feeling. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Well, he's communicating it to 22 Mr. Kringel, isn't he, in this memo?</p>

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<p>1 MS. TABACCHI: I'm going to object to 2 this entire line of questioning as beyond the 3 scope of the Notice. 4 THE WITNESS: It is a communication to 5 Mr. Kringel. But whether Mr. Kringel felt that 6 way or not I can't tell by this. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Well, what was Abbott's position in 1991 9 as to whether AWP was a poor indicator of actual 10 drug acquisition cost? 11 MS. TABACCHI: Object to the form, 12 beyond the scope of the Notice. 13 THE WITNESS: As we've said before, 14 Abbott never set AWP, does not set AWP. And so 15 it's something that was out of our control. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Well, Abbott did understand that its 18 list price reporting impacted AWP; didn't it? 19 MS. TABACCHI: Object to the form, 20 beyond the scope, mischaracterizes the witness' 21 prior testimony. 22 THE WITNESS: There may have been a few</p>	<p>1 MS. TABACCHI: Object to the form, 2 beyond the scope of the Notice, asked and 3 answered. 4 THE WITNESS: I think in 1991 and 5 forward Abbott did not have necessarily an opinion 6 on what AWP was represented to be. We didn't set 7 it, we weren't responsible for it. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Did Abbott have any concerns that 10 changes to the AWP based reimbursement system 11 would impact its business? 12 MS. TABACCHI: Object to the form, 13 beyond the scope of the Notice. 14 THE WITNESS: I think the concern here 15 is not necessarily, as stated by Don Robertson, is 16 not necessarily one of AWP as much as it is of 17 looking at a national drug fee schedule and 18 looking ahead and saying a national fee schedule 19 was talked about a number of times in the 1990s, 20 and this may have been just the beginning of it, 21 but a number of times by both HCFA and Congress, 22 especially for generic drugs, had the potential of</p>
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<p>1 people within the division that understood that, 2 but in general they did not, Abbott did not. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Why if in 1991 Abbott had an 5 understanding that AWP was a poor indicator of 6 actual drug costs, did it continue to report its 7 list prices at the levels that it did for the 8 subject drugs? 9 MS. TABACCHI: Object to the form, 10 beyond the scope of the Notice. 11 THE WITNESS: As I've said before, from 12 this time period through, you know, 1999 AWP and 13 reimbursement was not a consideration in terms of 14 what we did with our list prices. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Sir, if you could go to the second 17 paragraph, the second sentence from the bottom 18 beginning "The abandonment of AWP," do you see 19 that, "as a good indicator"? 20 A. Uh-huh. 21 Q. In 1991 did Abbott believe that AWP was 22 a good indicator of product acquisition cost?</p>	<p>1 what's represented here is a continual downward 2 spiral of drug prices. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Why would that impact, why would a 5 national drug fee schedule have a downward spiral 6 for Abbott's drug prices? 7 MS. TABACCHI: Object to the form, 8 beyond the scope. 9 THE WITNESS: Again, I can't speak 10 specifically to this because I haven't read what 11 all the rules were in the attachment, but many 12 times in government programs when they went to 13 look at price controls, there was a constant 14 update that would have driven prices lower in the 15 marketplace. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Would changes to Medicare and Medicaid 18 reimbursement and the methodology for Medicare and 19 Medicaid reimbursement have an impact on Abbott's 20 contract prices? 21 MS. TABACCHI: Object to the form, 22 beyond the scope.</p>

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<p style="text-align: right;">Page 373</p> <p>1 THE WITNESS: Not directly. 2 BY MS. ST. PETER-GRIFFITH: 3 Q. Then why would there be a concern? 4 MS. TABACCHI: Same objections. 5 THE WITNESS: Again, what I said a 6 primary component of our pricing was to remain 7 competitive with other drug companies. So 8 anything pushing down on price in any segment of 9 the industry could have an effect on what prices 10 would be acceptable in the marketplace. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. Well, how could Medicare or Medicaid 13 reimbursement structures have a downward pressure 14 on Abbott's contract prices? 15 MS. TABACCHI: Object to the form, 16 beyond the scope of the Notice. 17 THE WITNESS: There are normal market 18 forces in play in every market. Whenever you 19 introduce a new force and by virtue of a 20 reimbursement change, you would be talking about a 21 new force entering the marketplace. You can't 22 really anticipate what the market is going to do</p>	<p style="text-align: right;">Page 375</p> <p>1 MS. TABACCHI: Object to the form, 2 beyond the scope of the Notice. 3 THE WITNESS: I think as this, and as 4 Virginia's original statement, we couldn't really 5 tell what kind of effect it would have. We knew 6 it would have some effect someplace. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Setting aside these two memorandums, I 9 just want to ask you in general from the time 10 period from 1991 until 2003 we discussed earlier 11 what factors factored into Abbott's pricing. I 12 want to ask did Medicare or Medicaid reimbursement 13 and impacts to Medicaid or changes to Medicaid and 14 Medicare reimbursement, did that in any way 15 influence Abbott's pricing decisions, either its 16 catalog pricing decisions or its list pricing 17 decisions? 18 MS. TABACCHI: Object to the form, 19 beyond the scope, asked and answered. 20 THE WITNESS: No. 21 MS. ST. PETER-GRIFFITH: Tina, this is 22 No. 29 in hopefully your numbered --</p>
<p style="text-align: right;">Page 374</p> <p>1 to react to that. 2 I think an interesting sidelight to 3 this was, and this is really based on reducing the 4 physician fee schedules I think is where this 5 first started, and CMS, or HCFA at that time, 6 reduced the physician fee schedules in the early 7 '90s and they expected to save money. 8 Years later in retrospect as they 9 look back, physicians reacted by seeing more 10 patients, not by charging less. So they saw more 11 patients for less time and charged the reduced 12 fee. 13 So I don't think anybody, CMS 14 included, anticipated that kind of reaction, but 15 that's, you know, you change anything in a market 16 equilibrium and something else has to change. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Well, is it fair to say that if there 19 were changes or anticipated changes in Medicare or 20 Medicaid reimbursement, that would factor into 21 Abbott's pricing considerations for its contract 22 pricing?</p>	<p style="text-align: right;">Page 376</p> <p>1 MS. TABACCHI: Are you skipping? 2 MS. ST. PETER-GRIFFITH: No, no. In 3 terms of -- 4 MS. TABACCHI: Oh, in here? 5 MS. ST. PETER-GRIFFITH: Yes. 6 What I gave you before had numbers 7 on it. Well, why don't you take a look at that 8 before it's marked. And while you're doing that, 9 why don't we have Mr. Anderson enter his 10 appearance now that he's arrived from Texas. 11 MR. ANDERSON: Good morning. Jarrett 12 Anderson for the realtor. 13 MS. TABACCHI: I'm sorry. So this you 14 think is in here or in my stack of stuff from 15 before? 16 MS. ST. PETER-GRIFFITH: Well, if those 17 are just the exhibits that we premarked, then no. 18 But I had a stack that had little stickies on it 19 with numbers at the bottom. 20 You know what, Tina, I'll just try 21 to give you the copies that I have. 22 MS. TABACCHI: So is this being marked</p>

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<p>1 as Exhibit 19?</p> <p>2 MS. ST. PETER-GRIFFITH: 19.</p> <p>3 (WHEREUPON Exhibit Sellers 019</p> <p>4 was marked as of 3/31/2008.)</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Mr. Sellers, have you ever seen this</p> <p>7 document before? (Document tendered to the</p> <p>8 witness.)</p> <p>9 A. No.</p> <p>10 Q. The document, is it fair to say, makes</p> <p>11 certain representations about corporate</p> <p>12 positioning regarding the topic of AWP. Do you</p> <p>13 see that?</p> <p>14 A. Yes.</p> <p>15 Q. My question for you pertains to the</p> <p>16 second bullet. Do you see that? "The pricing</p> <p>17 structure of Abbott products is based on the</p> <p>18 investment made in those products and the needs of</p> <p>19 our customers." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Is that a fair statement of Abbott's</p> <p>22 pricing structure for its, HPD products?</p>	<p>1 gain approval for the ability to produce and</p> <p>2 market the product were all considerations in what</p> <p>3 price we put on the table.</p> <p>4 The needs of the customer, whenever</p> <p>5 you look at serving a marketplace you have to</p> <p>6 consider the needs of your customer. And often</p> <p>7 times, as I said before, the drug delivery methods</p> <p>8 were in consideration.</p> <p>9 So, again, if we offered them a</p> <p>10 drug delivery system that was more easy to use,</p> <p>11 required less labor on their part, that was a</p> <p>12 consideration in terms of how we priced our</p> <p>13 product.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Is it fair to say that those needs that</p> <p>16 you just articulated or the investments, you know,</p> <p>17 what it costs to bring the generic to market, were</p> <p>18 those factors in setting the initial price of the</p> <p>19 product?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: No. They were factors</p> <p>22 whenever we adjusted the price of the product.</p>
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<p>1 MS. TABACCHI: Object to the form,</p> <p>2 beyond the scope of the Notice.</p> <p>3 THE WITNESS: I think it's fair. I</p> <p>4 think it's a bit short when we talk about all of</p> <p>5 the products within the Hospital Products</p> <p>6 Division, namely because the vast majority of</p> <p>7 products in the Hospital Products Division were</p> <p>8 generic products. And so it was also a matter of</p> <p>9 competitiveness.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. And the products that we're talking</p> <p>12 about in this lawsuit, and I'll put the Complaint</p> <p>13 in front of you, in terms of the subject drugs</p> <p>14 those are all generic drugs; right?</p> <p>15 A. Yes.</p> <p>16 Q. For the subject drugs that are at issue</p> <p>17 in this lawsuit, did investment into products or</p> <p>18 needs of the customer factor into Abbott's pricing</p> <p>19 decisions?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Definitely. What it costs</p> <p>22 us to produce the product, what it costs us to</p>	<p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Other than what you've testified to</p> <p>3 today and earlier, have we covered every factor</p> <p>4 that factored into Abbott's pricing for the</p> <p>5 products that are at issue in this lawsuit?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Well, I can't speak to</p> <p>8 every factor, but I can say that the vast majority</p> <p>9 of what we've talked about today were the primary</p> <p>10 factors.</p> <p>11 (WHEREUPON Exhibit Sellers 020</p> <p>12 was marked as of 3/31/2008.)</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Sir, I'm only going to focus on the</p> <p>15 front page. We're not going to do a detailed</p> <p>16 review of the other pages. (Document tendered to</p> <p>17 the witness.)</p> <p>18 A. Okay.</p> <p>19 Q. Sir, have you seen this document before?</p> <p>20 A. No.</p> <p>21 Q. The document appears to be a letter from</p> <p>22 Dennis Walker. Who is Mr. Walker?</p>

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<p style="text-align: right;">Page 381</p> <p>1 A. He was a national accounts manager in 2 our Alternate Site Product Sales business at the 3 time. 4 Q. And it's a letter to the manager of bids 5 and contracts for Managed Health Associates. Do 6 you see that? 7 A. Yes. 8 Q. Was that better known as MHA? 9 A. It has been MHA on some documents, yes. 10 Q. What is MHA? 11 A. As I understood it, MHA was a group 12 purchasing organization primarily serving 13 Alternate Site facilities. I'm not sure exactly 14 what Alt. Site facilities, whether they were 15 ambulatory surgery centers or whether they were 16 close pharmacies or nursing homes, but it was 17 primarily an Alt. Site GPO. 18 Q. Sir, does Abbott see anything improper 19 with this letter that Mr. Walker sent to MHA? 20 MS. TABACCHI: Object to the form of the 21 question, beyond the scope of the Notice. 22 Mr. Sellers has not been designated</p>	<p style="text-align: right;">Page 383</p> <p>1 to provide that information at the current time." 2 Do you see that? 3 A. Yes. 4 Q. Would it have been permissible under 5 Abbott's practice to provide AWP information to a 6 GPO customer like MHA at any time? 7 MS. TABACCHI: Objection, beyond the 8 scope. 9 THE WITNESS: That wasn't within our 10 practice, no. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. In 1998 did Abbott have a concern about 13 heightened sensitivity to the subject of AWPs? 14 MS. TABACCHI: Objection, beyond the 15 scope. 16 THE WITNESS: No. It was never within 17 our practice to provide AWPs to customers. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Was it permissible under Abbott's 20 practice to refer customers to Red Book or 21 Medi-Span for AWP information? 22 A. Yes.</p>
<p style="text-align: right;">Page 382</p> <p>1 to testify on whether Abbott thinks something is 2 improper in this letter. 3 If you have a personal opinion, 4 Mr. Sellers, you can express it. He's not 5 testifying on behalf of the corporation. We've 6 put a compliance witness and other witnesses. 7 THE WITNESS: Personally if I would have 8 written this letter, and in hindsight, I would 9 have stricken the first phrase in the second 10 paragraph. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. The "due to the heightened sensitivity 13 to the subject of AWPs"? 14 A. Yes. 15 Q. Why would you have done that? 16 MS. TABACCHI: Beyond the scope. 17 THE WITNESS: Because I don't think it 18 needs that kind of emphasis. I think we could 19 basically just say we don't provide AWPs, and give 20 them a reference of where they could get them. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Well, this reference says "We are unable</p>	<p style="text-align: right;">Page 384</p> <p>1 Q. Why wouldn't that be prohibited by the 2 practice? 3 MS. TABACCHI: Objection, beyond the 4 scope. 5 THE WITNESS: We've never had a practice 6 to say that AWPs never existed. Our practice has 7 always been that AWPs were not set by Abbott, were 8 not controlled by Abbott, and that if any requests 9 came through they were available from the 10 publishers, and that's who we should refer people 11 to if they wanted to get the AWPs. 12 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Sir, who is Mr. Heggie? 15 A. Mike Heggie was an employee within 16 Alternate Site during the stated period in a 17 variety of positions I believe. 18 Q. Was he a subordinate to you when you 19 were in Alternate Site? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: He never reported to me, 22 no.</p>

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<p style="text-align: right;">Page 385</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. But was he in your chain of command? 3 A. No. 4 Q. Or were you in his chain of command? 5 A. No. 6 Q. Sir, you testified last time that we 7 were here that Abbott did not have an 8 understanding as to how AWP's were calculated, at 9 least until much later in the time period that's 10 at issue in this lawsuit; is that fair? 11 A. Yes. 12 Q. Why didn't Abbott prior to 2001, 2002 13 take an interest in how AWP's were calculated? 14 MS. TABACCHI: Object to the form, 15 beyond the scope. 16 THE WITNESS: Our practice was not to 17 use, monitor, or control AWP's. So AWP was not a 18 relevant number for the vast majority of the 19 Hospital Products Division. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Would there be any reason why Abbott 22 would care about how AWP's are calculated?</p>	<p style="text-align: right;">Page 387</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Was this one of the documents that you 3 reviewed, one of the exhibits that you reviewed, 4 to the transcripts that you reviewed over the 5 weekend? 6 A. I didn't review in detail the 7 attachments. I'm not even sure I had the 8 attachments in what I reviewed over the weekend. 9 Q. This letter is dated 1993 and it's 10 directed to Lisa at Red Book from Michael Heggie. 11 Do you see that? 12 A. Yes. 13 Q. In the middle paragraph that begins "As 14 you told me on the phone, Abbott has a policy of 15 allowing Red Book to establish AWP." Do you see 16 that? 17 A. Yes. 18 Q. Then the next sentence reads "The 19 formula as I understand it is minus five percent 20 plus twenty-five percent." Do you see that? 21 A. Yes. 22 Q. Why would Abbott care about what the</p>
<p style="text-align: right;">Page 386</p> <p>1 MS. TABACCHI: Objection, beyond the 2 scope, object to the form. 3 THE WITNESS: No. 4 (WHEREUPON Exhibit Sellers 021 5 was marked as of 3/31/2008.) 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Sir, what's just been marked as Exhibit 8 21 was previously used in the Michael Heggie 9 deposition and marked as Exhibit 68, the Heggie 10 deposition in Texas. If you want to take a few 11 minutes to look at this document. (Document 12 tendered to the witness.) 13 MR. ANDERSON: It's, for the record, 14 also part of the Heggie transcripts in the federal 15 case. 16 THE WITNESS: Okay. I've read it. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Sir, does Abbott recognize this 19 document? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I've seen it before prior 22 to one of my depositions.</p>	<p style="text-align: right;">Page 388</p> <p>1 formula is? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: In general, Abbott doesn't 4 care, didn't care. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Why would Mr. Heggie care? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: I'm not sure why he would 9 be that specific. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Do you know why it would be important 12 for Red Book to call back Karla Kreklow and to 13 give her a verified AWP? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: No, because I don't know 16 what product this was attached to. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Well, irrespective of what product it's 19 attached to, for any product would it have been 20 important for Abbott to receive verified AWP 21 information from Red Book? 22 MS. TABACCHI: Object to the form.</p>

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<p>1 THE WITNESS: No.</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. How come?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: It wasn't an operative</p> <p>7 number for us.</p> <p>8 (WHEREUPON Exhibit Sellers 022</p> <p>9 was marked as of 3/31/2008.)</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Actually, sir, I think that last page,</p> <p>12 is this the last page?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Why don't we take that off because that</p> <p>15 was inadvertently stapled.</p> <p>16 A. Okay. All right.</p> <p>17 Q. Sir, does Abbott recognize this</p> <p>18 document?</p> <p>19 MS. TABACCHI: Objection, beyond the</p> <p>20 scope of the Notice.</p> <p>21 THE WITNESS: I don't recall seeing this</p> <p>22 document before.</p>	<p>1 Q. Is it fair to say that as early as 1996</p> <p>2 Abbott had some indication that there was a</p> <p>3 correlation between its list prices on the subject</p> <p>4 drugs and the high spreads that were being paid as</p> <p>5 part of Medicare and Medicaid reimbursement on the</p> <p>6 subject drugs?</p> <p>7 MS. TABACCHI: Object to the form,</p> <p>8 beyond the scope of the Notice.</p> <p>9 THE WITNESS: Again, I don't think</p> <p>10 within the operating division that there was that</p> <p>11 understanding or any understanding with regard to</p> <p>12 that.</p> <p>13 (WHEREUPON Exhibit Sellers 023</p> <p>14 was marked as of 3/31/2008.)</p> <p>15 MS. ST. PETER-GRIFFITH: Tina, I'll</p> <p>16 represent to you that those are a bunch of loose</p> <p>17 documents that were produced as part of the Bruce</p> <p>18 Rodman production.</p> <p>19 MS. TABACCHI: So they're stapled</p> <p>20 together, but they don't all go together?</p> <p>21 MS. ST. PETER-GRIFFITH: Well, they're</p> <p>22 stapled together because frankly that's sort of</p>
Page 390	Page 392
<p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Why in 1996 in response to the Civil</p> <p>3 Investigative Demand served by the United States</p> <p>4 didn't Abbott lower or consider lowering its list</p> <p>5 prices on the drugs that were referenced in the</p> <p>6 Civil Investigative Demand?</p> <p>7 MS. TABACCHI: Objection, beyond the</p> <p>8 scope, object to the form.</p> <p>9 THE WITNESS: When we originally got the</p> <p>10 investigative demands, outside of maybe someone in</p> <p>11 our legal department, I'm not sure we understood</p> <p>12 what the issues were.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Why didn't you go to the United States</p> <p>15 and ask what the issues were?</p> <p>16 MS. TABACCHI: Objection, beyond the</p> <p>17 scope, object to the form.</p> <p>18 THE WITNESS: We depended on our legal</p> <p>19 counsel, and it was a matter of litigation. So</p> <p>20 that would have been their responsibility if they</p> <p>21 felt it was needed.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 how they were produced to us.</p> <p>2 MS. TABACCHI: Okay.</p> <p>3 MS. ST. PETER-GRIFFITH: But in going</p> <p>4 through the original box with Mr. Rodman, they</p> <p>5 were all over the place and they were stamped all</p> <p>6 over the place. Believe, me I was equally</p> <p>7 surprised.</p> <p>8 MS. TABACCHI: You're not representing</p> <p>9 that it's one document?</p> <p>10 MS. ST. PETER-GRIFFITH: No, I'm not.</p> <p>11 MS. TABACCHI: It's just what Bruce</p> <p>12 Rodman gave you?</p> <p>13 MS. ST. PETER-GRIFFITH: Right.</p> <p>14 MS. TABACCHI: Got it.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Sir, we're going to get into Home</p> <p>17 Infusion a little bit more in a minute. But</p> <p>18 before I leave the pricing topic, I want to get</p> <p>19 Abbott's understanding, I want you to testify as</p> <p>20 to Abbott's understanding of how AWP factored into</p> <p>21 usual and customary pricing or other pricing</p> <p>22 utilized by the Home Infusion business unit.</p>

16 (Pages 389 to 392)

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<p style="text-align: right;">Page 393</p> <p>1 A. I can tell you I'm not familiar with any 2 convention with regard to usual and customary. 3 Usual and customary rates for 4 therapies were set by each of our clients as we 5 worked through those. Home Infusion had some 6 usual and customary rates for any services that we 7 provided directly, but that was a minority of the 8 work that we did from '92 on when I was involved 9 with it. 10 Q. As part of its services that it provided 11 to clients, did Abbott assist them in helping set 12 their usual and customary rates? 13 A. There were discussions between as we set 14 up a new client, particularly those clients that 15 had no experience in the home infusion business, 16 there were discussions between our reimbursement 17 folks and their operating personnel talking about 18 what things they might want to consider in the 19 U&Cs. 20 Q. Well, were you aware of any manuals that 21 were put together that were utilized by Abbott's 22 Home Infusion business unit and its customers in</p>	<p style="text-align: right;">Page 395</p> <p>1 are the only times that I'm familiar that AWP came 2 into play. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. What about for pricing for therapies 5 that were going to be provided or drugs that were 6 going to be provided as part of therapies, did AWP 7 factor into that pricing? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I don't know. 10 MS. ST. PETER-GRIFFITH: Before we jump 11 into the document, we've got five minutes left on 12 the tape. Why don't we take a quick break. 13 THE WITNESS: Okay. 14 THE VIDEOGRAPHER: We are off the record 15 at 10:23 a.m. with the end of Tape 1. 16 (WHEREUPON a recess was taken.) 17 THE VIDEOGRAPHER: We are back on the 18 record at 10:37 a.m. with the start of Tape No. 2. 19 BY MS. ST. PETER-GRIFFITH: 20 Q. Mr. Sellers, before we dive into the 21 document that's in front of you, did Abbott's Home 22 Infusion business unit provide to its consignment</p>
<p style="text-align: right;">Page 394</p> <p>1 helping establish what the usual and customaries 2 were? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I'm not familiar with the 5 details of a manual. We did have a reimbursement 6 implementation manual, if I remember right. What 7 in specifics were covered within that manual I'm 8 not familiar with. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. How important was AWP to Abbott's Home 11 Infusion business unit pricing? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: It wasn't important. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. How was it utilized by Abbott's Home 16 Infusion business unit in its pricing? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: The only place AWP was 19 used was when it was requested by either a case 20 manager or a payor, whether they requested that on 21 the claim form or whether they requested it in the 22 per diem negotiations that we went through. Those</p>	<p style="text-align: right;">Page 396</p> <p>1 partners Ross products and TAP products such as 2 Lupron? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: In our consignment 5 program, we included Ross enteral solutions as 6 well as enteral feeding products or devices. We 7 did not include any products from TAP. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. What's the basis for your statement that 10 you didn't include any products from TAP? 11 A. TAP is a joint venture between Takada 12 and Abbott Laboratories, Takada Abbott 13 Pharmaceuticals, that's where the "TAP" came from. 14 And as such, TAP operated at an arm's length 15 relationship with Abbott and Takada. So we did 16 not have access to the TAP products. 17 Q. But did Abbott Home Infusion dispense 18 Lupron to its consignment partners? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: Typically, Lupron is, as I 21 understand it, is not dispensed at home. It's 22 primarily dispensed in a physician's office.</p>

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<p style="text-align: right;">Page 397</p> <p>1 However, we may have dispensed 2 Lupron based on physician prescriptions. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Through the Home Infusion business unit? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: Through the Home Infusion 7 pharmacies, or any of our clients may have 8 dispensed Lupron as well. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. And when they dispensed Lupron, would 11 Abbott Home Infusion be responsible for providing 12 the Lupron product to either the Home Infusion 13 pharmacies or to the clients, Home Infusion 14 clients? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: When our clients dispensed 17 Lupron, they would be responsible for purchasing 18 the Lupron. 19 BY MS. ST. PETER-GRIFFITH: 20 Q. I'm sorry. I misspoke. 21 In terms of distributing the Lupron 22 to the Home Infusion clients for dispensation,</p>	<p style="text-align: right;">Page 399</p> <p>1 Q. Sir, if former Home Infusion business 2 unit employees such as Bruce Rodman or Karla 3 Kreklow or Lynn Leone have testified in this case 4 that Abbott's Home Infusion division did in fact 5 dispense or provide Lupron to its clients, Home 6 Infusion clients to dispense, would that surprise 7 Abbott? 8 MS. TABACCHI: Object to the form, 9 beyond the scope. 10 THE WITNESS: It was not within our 11 consignment program. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Is there some stated policy or document 14 that reflects that that you're aware of? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: Not that I could produce, 17 no. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. If Abbott Home Infusion was dispensing 20 Lupron, would that be violative of any Abbott 21 policy or procedure? 22 MS. TABACCHI: Object to the form.</p>
<p style="text-align: right;">Page 398</p> <p>1 would Abbott do that? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: It was not included in any 4 of our consignment programs with our clients. So 5 if they needed Lupron, they would have to purchase 6 Lupron from a wholesaler or directly from TAP. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Did Abbott Home Infusion have a group 9 purchasing organization that it worked with to 10 assist its consignment partners in procuring 11 product? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: We were a member of an 14 Alternate Site group purchasing organization 15 called Purchase Connection. That GPO was used by, 16 used nationally, by a number of Alternate Site 17 companies and facilities. And we were a member 18 just like Coram would be a member. I don't know 19 whether Coram was, but if they were -- 20 BY MS. ST. PETER-GRIFFITH: 21 Q. I understand. 22 A. As an example.</p>	<p style="text-align: right;">Page 400</p> <p>1 THE WITNESS: No. 2 BY MS. ST. PETER-GRIFFITH: 3 Q. How come? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: We dispensed drugs 6 manufactured by whatever drug company was needed, 7 not just Abbott Labs. And we, just like Walgreens 8 or any other retail pharmacy, were dictated by the 9 physician's prescription. So if the physician 10 prescribed a particular gentamicin for instance, 11 that wasn't our gentamicin, we were required to 12 dispense that gentamicin. We would go out and 13 procure that gentamicin and dispense that drug. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. You're talking about Abbott's Home 16 Infusion pharmacies themselves; right? 17 A. Yes. 18 Q. With regard to its consignment partners, 19 was there any policy or procedure that prohibited 20 Abbott's Home Infusion department from consigning 21 Lupron to them? 22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 401</p> <p>1 THE WITNESS: We did not have an 2 agreement with TAP for an access of products. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. But did the fact that you didn't have an 5 agreement with TAP for an access of products, 6 would that have precluded Abbott's Home Infusion 7 business unit from consigning Lupron to its 8 revenue share partners? 9 MS. TABACCHI: Object to the form, asked 10 and answered. 11 THE WITNESS: I am not aware of any 12 products that were not Abbott Laboratories 13 products that were in the consignment program. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Sir, if you could take a look at what's 16 been marked as the next exhibit. 17 There are only a few documents that 18 I would like to look at. The first is that if you 19 flip the page, 2392. 20 A. Okay. 21 Q. If you could look down to where it says 22 "TPN Miscellaneous Nutrients Trace Elements CPD</p>	<p style="text-align: right;">Page 403</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. I'll represent to you where it came 3 from. It came from Bruce Rodman who rescued it 4 from the trash, as according to his testimony. 5 And he verified that it is an Abbott Home Infusion 6 document. 7 A. Okay. 8 Q. If you look down under Roman Numeral II 9 where there's an underlined section that says 10 "Upcharge Any Single Dose Multi-dose Vial At AWP 11 x2." Do you see that? 12 A. Yes. 13 Q. And then the next sentence says "If 14 there are multiple manufacturers with the same 15 vial size, use the most expensive AWP and upcharge 16 by 2.0." 17 A. Yes. 18 Q. Why would Abbott in calculating its Home 19 Infusion pricing choose the most expensive AWP and 20 upcharge it by double? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: I assume that this is a</p>
<p style="text-align: right;">Page 402</p> <p>1 Drugs." Do you see that at the top? 2 A. Number one? 3 Q. Yes, Roman Numeral I. 4 A. Yes. 5 Q. Do you see where it says "Upcharge AWP 6 By 1.4"? 7 A. Yes. 8 Q. Does that refresh your recollection as 9 to whether or not AWP was a factor that factored 10 into pricing for Abbott's Home Infusion business 11 unit? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: I wasn't familiar with the 14 absolute details of what went into the U&C 15 definition. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Well, is it possible that AWP factored 18 into that then and Abbott just wasn't aware of it? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: Well, you've got a 21 document that talks to it. I don't know where 22 this document came from.</p>	<p style="text-align: right;">Page 404</p> <p>1 document that is talking about usual and customary 2 charges. Usual and customary charges are the 3 charges that would go on the claim. 4 Usual and customary charges we did 5 not anticipate getting paid that level. And the 6 guideline here was I think set to make sure that 7 usual and customary would never be below what any 8 payor would pay. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Well, do you know how Abbott did that? 11 MS. TABACCHI: Object to the form, 12 beyond the scope. 13 THE WITNESS: How it did what? 14 BY MS. ST. PETER-GRIFFITH: 15 Q. How it determined what the usual and 16 customary -- strike that. 17 Let's just go on to Page 2394. 18 This pertains to at the top it says "Establish 19 Pricing Parameters." Do you see that? 20 A. Yes. 21 Q. And it does say "Draft" at the top. 22 A. Yes.</p>

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<p>1 Q. In establishing its pricing parameters</p> <p>2 for usual and customaries for compounded</p> <p>3 antibiotics, including vancomycin, would Abbott</p> <p>4 utilize AWP pricing?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: I can only comment on this</p> <p>7 draft form, and it does have AWP as a factor</p> <p>8 listed.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. How important was AWP for Abbott's</p> <p>11 products to Abbott's Home Infusion business unit's</p> <p>12 pricing?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: This really had nothing to</p> <p>15 do with Abbott in particular.</p> <p>16 Of the drugs that are listed there,</p> <p>17 none of those were Abbott products. This I would</p> <p>18 assume, and again, it's a draft document so I</p> <p>19 don't know whether it was actually used or not,</p> <p>20 but, again, it was setting a baseline price for a</p> <p>21 therapy.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 were very, very few people that even had an</p> <p>2 understanding of this kind of document, probably</p> <p>3 even less people that understood this kind of</p> <p>4 document versus people that might have understood</p> <p>5 what a healthcare payor would pay in the state of</p> <p>6 Washington or the state of Utah. And the vast</p> <p>7 majority of the Hospital Products Division could</p> <p>8 care less about it.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. But was AWP important to the Home</p> <p>11 Infusion business unit?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: No. It wasn't critical.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Well, if it factored into their pricing</p> <p>16 for their therapies and pricing for products that</p> <p>17 were billed to Medicare and Medicaid by the</p> <p>18 reimbursement department, why wouldn't that be</p> <p>19 important to Abbott Home Infusion?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: I think if you look across</p> <p>22 the time period as I recall it, I heard any number</p>
Page 406	Page 408
<p>1 Q. How would Abbott's AWP's factor into its</p> <p>2 Home Infusion pricing?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Well, for instance, if</p> <p>5 they were pricing fluconazole, it wouldn't factor</p> <p>6 in at all because Abbott didn't make fluconazole</p> <p>7 whenever this time period was.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. What about vancomycin?</p> <p>10 A. Huh?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. What about if it was vancomycin?</p> <p>14 A. It may or may not have.</p> <p>15 Q. Was AWP important to Abbott's Home</p> <p>16 Infusion business unit?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: AWP was a factor that some</p> <p>19 people knew may or may not have been used in the</p> <p>20 calculation of what was going to be ultimately</p> <p>21 reimbursed.</p> <p>22 From the standpoint of HPD, there</p>	<p>1 of factors used for reimbursement, AWP, mean AWP,</p> <p>2 minimum AWP, a different meaning for AMP, it</p> <p>3 wasn't really the federal AMP, list price, any</p> <p>4 number of factors that could have been used for</p> <p>5 that.</p> <p>6 Again, this kind of document looks</p> <p>7 at usual and customary charges for the entire</p> <p>8 therapy. And it was intended to be high because</p> <p>9 we knew we'd never get paid that.</p> <p>10 If you look at most of the analyses</p> <p>11 that we did and we've submitted those, and I've</p> <p>12 seen those in a number of documents that are</p> <p>13 already in this litigation with regard to</p> <p>14 proposals to Home Infusion, U&C was nothing more</p> <p>15 than a benchmark with which we measured where we</p> <p>16 actually got paid. We got paid a percent of U&C</p> <p>17 on a variety of therapies.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Why would Abbott use average wholesale</p> <p>20 price then as part of its determination for its</p> <p>21 usual and customary charges?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 409</p> <p>1 THE WITNESS: I don't know. I don't 2 know whether Bruce Rodman answered that question 3 or not. It was, again, just an index. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Well, I want to know why Abbott felt the 6 need to utilize not just AWP but multiples of AWP, 7 two to three times the AWP number and the highest 8 reported AWP, why did Abbott feel the need to 9 utilize AWP in that regard in setting its usual 10 and customary? 11 MS. TABACCHI: Object to the form, 12 beyond the scope of the Notice. 13 THE WITNESS: I think in terms of the 14 Home Infusion area, we were not dealing with just 15 Abbott products, we were dealing with Abbott 16 products, Roesch Products, Merck products, 17 Pharmacia products, Bristol Meyers, whatever. 18 So I think they probably chose an 19 index that they could use for any drug regardless 20 of whether it was Abbott or not. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. If you could turn towards the fifth page</p>	<p style="text-align: right;">Page 411</p> <p>1 and noncompounded drugs." Do you see that? 2 A. Uh-huh. 3 Q. Is that a fair statement of what, from 4 Abbott's viewpoint, of what Abbott did in terms of 5 its pricing for compounded and noncompounded drugs 6 in the Home Infusion arena? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: Just give me a second. 9 MS. ST. PETER-GRIFFITH: Sure. 10 THE WITNESS: Okay. I'm sorry. Your 11 question again? 12 MS. ST. PETER-GRIFFITH: Sure. Can you 13 read it back. 14 (WHEREUPON said record was read 15 back as requested.) 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I'm not familiar with that 18 detail. I don't know the context of this memo, so 19 I can't really say. With regard to Home Infusion 20 services it may have been in some cases. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Well, let me take it outside the context</p>
<p style="text-align: right;">Page 410</p> <p>1 from the end, BR02436. Do you see at the top it's 2 an 11/03/97 memorandum from Shelley Bronson -- 3 A. Yes. 4 Q. To Suzie Dale and Chris Alex. 5 A. Yes. 6 Q. Do you know who they are? 7 A. They were within our reimbursement 8 department. 9 Q. Who is Shelley Bronson? 10 A. She was at this time a managed care 11 specialist that was actually working in our 12 contracting department within Home Infusion. 13 Q. Did she also do some training? 14 A. Yes. Both she and Lynn Leone, who I 15 believe was the other managed care specialist at 16 some point during this time, or actually prior to 17 this. Case management was an evolving reality for 18 our clients, so yes. 19 Q. If you could look at the first sentence 20 of this e-mail, it says "Per our pricing 21 methodology, which is AWP driven, we take the 22 highest AWP to compute the pricing for compounded</p>	<p style="text-align: right;">Page 412</p> <p>1 of this memo and just ask directly. To compute 2 its pricing for compounded and noncompounded drugs 3 in the Home Infusion business unit, was Abbott's 4 pricing methodology AWP driven? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I don't know. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. In setting the pricing, did Abbott's 9 Home Infusion business unit take the highest AWP? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: I don't know. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. If Abbott's Home Infusion business 14 unit's compounded and noncompounded drug pricing 15 was driven by AWP, is it fair to say that AWP was 16 important to the Home Infusion business unit? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: No. I don't think that's 19 fair. 20 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Why not?</p>

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<p style="text-align: right;">Page 413</p> <p>1 A. Because, again, the context of 2 everything I see here is with regard to usual and 3 customary. 4 Usual and customary was, again, a 5 price put on the claim, and in my experience 6 payment for a claim wasn't based on usual and 7 customary, it was based on whatever the formula 8 was that the payor was going to use. 9 Q. Well, then why would Abbott utilize AWP 10 or multiples of the highest AWP for purposes of 11 setting its pricing for compounded and 12 noncompounded Home Infusion products? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: It was, again, I believe 15 the convention was to set a price that would be 16 above whatever you would get reimbursed. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Did Abbott have an understanding as to 19 whether its other Home Infusion customers or 20 whether the Home Infusion marketplace similarly 21 relied upon AWP as part of its pricing and billing 22 for reimbursement?</p>	<p style="text-align: right;">Page 415</p> <p>1 I think you've shown documents that 2 there were some GPOs that have requested AWP and 3 may have talked to our people about AWP. So they 4 obviously knew something of that. But in general, 5 no, I don't believe that there was a prevalent 6 knowledge of how Home Infusion was reimbursed. 7 For one thing, Home Infusion was 8 one segment of our Product Sales people's 9 responsibility. They marketed our products to 10 home infusion companies, they marketed our 11 products to what we called closed-door consultant 12 pharmacists who eventually dispensed the product 13 to nursing homes, which was on a completely 14 different reimbursement schedule, and they sold 15 the products to ambulatory surgery centers. 16 So, again, this was one piece of a 17 broad array of customers that they sold products 18 to. 19 BY MS. ST. PETER-GRIFFITH: 20 Q. So it wouldn't have been important to 21 understand how this particular consumer segment 22 was reimbursed?</p>
<p style="text-align: right;">Page 414</p> <p>1 MS. TABACCHI: Object to the form, 2 beyond the scope. 3 THE WITNESS: I'm not aware of what 4 Virginia Tobiason or anybody in her department may 5 have known about what other people were billing. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Well, let's go outside Virginia 8 Tobiason. 9 The Alt. Site Product Sales sold 10 products to purchasing organizations that 11 ultimately distributed to the Home Infusion 12 market; is that fair? 13 A. Yes, one segment. 14 Q. Would it be fair to say that Abbott had 15 an understanding of how that Home Infusion 16 business sector was reimbursed? 17 MS. TABACCHI: Object to the form, 18 beyond the scope. 19 THE WITNESS: No. I don't believe that 20 there was an understanding by the Product Sales 21 people of the ins and outs of reimbursement for 22 Home Infusion.</p>	<p style="text-align: right;">Page 416</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: No, because I believe if 3 I'm a Product Sales person, the more important 4 thing is what are my competitors doing, not 5 necessarily what happens regardless of where they 6 buy the drug for the provider. 7 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Well, would it have been important to 10 understand what the competitors' AWP's or list 11 prices were? 12 MS. TABACCHI: Object to the form, 13 beyond the scope. 14 THE WITNESS: No. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. What did you as the Abbott corporate 17 representative do to educate yourself before 18 coming to testify here today about the 19 significance of pricing and AWP in the Home 20 Infusion business unit? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: Well, I ran the business</p>

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<p style="text-align: right;">Page 417</p> <p>1 for a period of time.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. So you have that firsthand experience.</p> <p>4 A. I have some knowledge. Though, again, I</p> <p>5 didn't process claims. So I do have that bit of</p> <p>6 knowledge. I have testified with regard to these</p> <p>7 subjects before. So I've got that background.</p> <p>8 But specifically for this, other</p> <p>9 than reading Lynn Leone's testimony and reading</p> <p>10 Shelley Bronson's testimony, which I think we</p> <p>11 talked about last time, and I believe I went</p> <p>12 through Bruce Rodman's testimony in pieces.</p> <p>13 Q. What is the 50?</p> <p>14 A. We had a couple of AS/400 computers.</p> <p>15 One we processed our pharmacies through, the other</p> <p>16 one we used as a timeshare for a lot of our</p> <p>17 clients. So I don't know which one, but the 50</p> <p>18 refers to one of them.</p> <p>19 Q. So it's one of the computer databases --</p> <p>20 A. Yes.</p> <p>21 Q. -- essentially?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 419</p> <p>1 Q. So when Abbott billed Lupron to Medicare</p> <p>2 and Medicaid or third-party providers, would it do</p> <p>3 so utilizing the Lupron AWP?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Again, I think this is</p> <p>6 talking about our list price which in terms of</p> <p>7 Home Infusion it's not the list price we've been</p> <p>8 talking about in terms of catalog. So I want to</p> <p>9 make sure that's the difference.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Oh, okay. Can you clarify what you mean</p> <p>12 by that, sir? So list price for Home Infusion was</p> <p>13 different than list price for HPD?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I think the context of</p> <p>16 this is list price is our usual and customary</p> <p>17 price.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Okay.</p> <p>20 A. So for Home Infusion dispensing a drug</p> <p>21 per a prescription, our usual and customary was</p> <p>22 referred to as our list price. So that's what</p>
<p style="text-align: right;">Page 418</p> <p>1 Q. Sir, if you could flip a few pages</p> <p>2 before that to BR02430. It's the June 13th</p> <p>3 memorandum from Lynn Leone to all reimbursement</p> <p>4 personnel. Do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Can you take a few minutes and look at</p> <p>7 this, please.</p> <p>8 A. Okay.</p> <p>9 Q. Sir, do you recognize this document?</p> <p>10 A. No.</p> <p>11 Q. Does it refresh Abbott's recollection as</p> <p>12 to whether or not it distributed to its revenue</p> <p>13 share partners in the Home Infusion business unit</p> <p>14 Lupron?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: No. It does indicate that</p> <p>17 we dispensed Lupron to patients, but it doesn't</p> <p>18 have any statement in here that we consigned</p> <p>19 Lupron to our --</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Revenue share partners?</p> <p>22 A. -- contract partners.</p>	<p style="text-align: right;">Page 420</p> <p>1 this is talking about is the definition of our</p> <p>2 usual and customary.</p> <p>3 Q. Okay. Well, let me ask you this: In</p> <p>4 the middle of the first paragraph it says "Because</p> <p>5 of these increases, our list price on the 50</p> <p>6 should be adjusted." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Was Abbott's Home Infusion list price</p> <p>9 for the products that its pharmacies dispensed on</p> <p>10 the 50?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Is that where it was kept or maintained?</p> <p>14 A. I would infer that from here.</p> <p>15 Q. Well, do you know based upon your</p> <p>16 experience from running Home Infusion?</p> <p>17 A. I remember there were two. I don't</p> <p>18 remember the terminology between them and which</p> <p>19 one housed what. But I would infer that since</p> <p>20 she's talking about the 50 and it's going to our</p> <p>21 pharmacists as well as our reimbursement</p> <p>22 personnel, that was where we housed anything that</p>

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<p style="text-align: right;">Page 421</p> <p>1 was done through our pharmacies. 2 Q. What was the correlation, if any, 3 between the list price for Abbott Home Infusion on 4 the 50, we'll just assume that it was on the 50 -- 5 A. Okay. 6 Q. -- and the catalog price or list price 7 published by AWP? 8 MS. TABACCHI: Object to the form, 9 beyond the scope of the Notice. 10 THE WITNESS: I'm not sure that there 11 was any functional equivalent. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Do you know what the relationship was 14 between AWP and Abbott Home Infusion list price 15 that's referenced here in this document? 16 MS. TABACCHI: Object to the form, 17 beyond the scope of the Notice. 18 THE WITNESS: Other than what this 19 document says, that's the extent of my knowledge. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Was AWP important to calculating the 22 list price for Abbott's Home Infusion -- strike</p>	<p style="text-align: right;">Page 423</p> <p>1 Q. Does that refresh Abbott's recollection 2 as to what the formula might have been between 3 Abbott's Home Infusion list price calculation and 4 AWP? 5 MS. TABACCHI: Objection, beyond the 6 scope. 7 THE WITNESS: I can only say that's what 8 it says on this memo. I haven't done the 9 calculation. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. I think it would be mean at this stage, 12 sir, to have you do math in your head on the 13 record. 14 A. Thank you. 15 Q. Sir, are you familiar, is Abbott 16 familiar, with the 1995 change in the reporting of 17 its pricing for vancomycin? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: Familiar with a 1995 price 20 change done on vancomycin, yes. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. What can you tell me about that price</p>
<p style="text-align: right;">Page 422</p> <p>1 that. 2 Was AWP important for calculating 3 the Abbott Home Infusion list price? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: It may have been. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Do you know whether there was a 8 particular formula that was utilized utilizing AWP 9 in calculating the list price? 10 A. I'm not familiar with that detail. 11 Q. But it's your testimony that Abbott 12 never consigned Lupron; is that fair? 13 A. Yes. 14 Q. If you could flip a few pages, maybe 15 eight or nine pages earlier, to BR02422. 16 Sir, this appears to be the same 17 memo we were just looking at, except there's some 18 handwriting under Product, do you see that, where 19 it says "AWP" -- 20 A. Yes. 21 Q. -- "x 1.15"? 22 A. Yes.</p>	<p style="text-align: right;">Page 424</p> <p>1 change? 2 MS. TABACCHI: Object to the form. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Well, let's start with this: Why was it 5 done? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: Well, you'll have to share 8 with me some specifics. I know that vancomycin 9 was part of a catalog price change in 1995. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Why was it part of a catalog -- well, 12 let me ask you this: How many other products had 13 catalog price changes in 1995? 14 A. I'm not sure, but I think probably a 15 good majority of the -- 16 Q. Well, are you familiar with any -- 17 A. -- drugs that were in our catalog at the 18 time. 19 Q. So let me ask you this: When you talk 20 about the 1995 catalog price change, are you 21 talking about a change in Abbott's vancomycin 22 catalog price along with a whole bunch of other</p>

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<p style="text-align: right;">Page 425</p> <p>1 price changes for Abbott products?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Are you aware of any individual price</p> <p>6 change for vancomycin that occurred in 1995?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I think there was a change</p> <p>9 to the vancomycin prices for a short period of</p> <p>10 time in the spring of 1995.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. What were the circumstances concerning</p> <p>13 that spring of '95 brief vanco price change?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I believe that someone</p> <p>16 from Home Infusion Services had requested of the</p> <p>17 Hospital Business Sector a consideration to reduce</p> <p>18 list price for a few versions of vancomycin. By</p> <p>19 "versions" I'm talking about concentrations,</p> <p>20 delivery forms.</p> <p>21 There was an agreement to reduce</p> <p>22 the prices per that request. That was</p>	<p style="text-align: right;">Page 427</p> <p>1 be versus the lower acquisition cost, when in</p> <p>2 reality they paid more for the product.</p> <p>3 So it was an understanding that if</p> <p>4 we took a reduction, we needed to make sure that</p> <p>5 they were compensated for that reduction on the</p> <p>6 stock they had on their shelves. They should not</p> <p>7 have been penalized because we decided to take a</p> <p>8 reduction.</p> <p>9 Q. Would that occur any time that Abbott</p> <p>10 made a decrease in their list prices?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: In the acquisition cost</p> <p>13 for the wholesaler.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Did Abbott have a particular policy or</p> <p>16 procedure regarding ensuring that there were the</p> <p>17 necessary reserves to cover those situations</p> <p>18 whenever it reduced a price, a list price for a</p> <p>19 product?</p> <p>20 MS. TABACCHI: Object to the form,</p> <p>21 beyond the scope.</p> <p>22 THE WITNESS: It was something that was</p>
<p style="text-align: right;">Page 426</p> <p>1 subsequently rescinded.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Why was it rescinded?</p> <p>4 A. I believe in referencing testimony by</p> <p>5 Gerry Eichhorn, that it was rescinded primarily</p> <p>6 because we did not have funds reserved to do a</p> <p>7 price reduction for wholesalers.</p> <p>8 Q. What do you mean by that?</p> <p>9 A. If we were to reduce an acquisition</p> <p>10 price for a wholesaler, we had a practice of</p> <p>11 giving the wholesaler what we called shelf</p> <p>12 adjustment payment.</p> <p>13 So any of the product that we</p> <p>14 reduced the acquisition cost on, whatever stocks</p> <p>15 they had at the time we reduced the acquisition</p> <p>16 cost, we would value the differential in the</p> <p>17 reduction and pay the wholesaler that</p> <p>18 differential.</p> <p>19 The reason we did that was</p> <p>20 otherwise the wholesaler would be penalized by our</p> <p>21 price reduction because their charge-backs from</p> <p>22 the point that we adjusted the price onward would</p>	<p style="text-align: right;">Page 428</p> <p>1 comprehended on any adjustment that we made.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. What testimony from Gerry Eichhorn were</p> <p>4 you referencing that you can recall reviewing?</p> <p>5 A. I believe Gerry Eichhorn testified that</p> <p>6 he had agreed to the price reduction, he had</p> <p>7 communicated the price reduction on the HBS side,</p> <p>8 he had communicated the price reduction to the</p> <p>9 individual in Home Infusion. And subsequent to</p> <p>10 that communication, Harry Adams came in and talked</p> <p>11 to him and instructed him that we couldn't reduce</p> <p>12 the prices because we only did it once a year and</p> <p>13 that it wasn't in the plans.</p> <p>14 Q. Why wasn't it in the plans?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: At that time price</p> <p>17 reductions were not something that were</p> <p>18 comprehended in our annual plans.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Okay. You're talking about the August</p> <p>21 or April update plans?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 429</p> <p>1 THE WITNESS: Any of our budget plans.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Well, how would it affect your budget?</p> <p>4 A. It's a payout to the wholesalers.</p> <p>5 Q. So it's the payout to the wholesalers</p> <p>6 that was not contemplated?</p> <p>7 A. Yes.</p> <p>8 Q. Why did Home Infusion initially ask for</p> <p>9 the reduction?</p> <p>10 A. As I recall, there was an issue raised</p> <p>11 by one or two of our clients that they had gotten</p> <p>12 some pushback from case managers with regard to</p> <p>13 using Abbott vancomycin versus using some other</p> <p>14 company's vancomycin, and that filtered back</p> <p>15 through into the Home Infusion organization.</p> <p>16 So I think the organization was</p> <p>17 trying to address a concern that the organization</p> <p>18 thought the clients had.</p> <p>19 Q. And what was that concern?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: As I said before, they had</p> <p>22 gotten some pushback from case managers.</p>	<p style="text-align: right;">Page 431</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Well, what did Abbott do to address the</p> <p>3 pushback?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: As I said, one person from</p> <p>6 Home Infusion went to the people that controlled</p> <p>7 list price, which was the Hospital Business</p> <p>8 Sector, and asked if they could get a</p> <p>9 consideration to reduce the list price on I</p> <p>10 believe three two or three --</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Vanco products?</p> <p>13 A. -- list numbers of vanco.</p> <p>14 Q. Was the concerns raised by the case</p> <p>15 managers of concern to Abbott?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: It was only a concern from</p> <p>18 the standpoint that if we could eliminate an</p> <p>19 objection for our clients, that was something that</p> <p>20 we ought to look at doing.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. You testified that the charge-back issue</p>
<p style="text-align: right;">Page 430</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Let me ask a different way. Did Abbott</p> <p>3 know why the case managers were given pushback?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: From my recollection, it</p> <p>6 was regarding our list price. What that had to do</p> <p>7 with the case manager, I'm not sure.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Well, could it have been the higher list</p> <p>10 price meant that there would be a higher AWP on</p> <p>11 the product?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: It may or may not have.</p> <p>14 My experience with case managers is</p> <p>15 they decided what number they were going to pay</p> <p>16 anyway. Whether they had a formula that related</p> <p>17 to that, I'm not familiar.</p> <p>18 So regardless of where, what price</p> <p>19 was where, at that point in time it was the</p> <p>20 beginning of the case management per se in the</p> <p>21 industry. So, you know, it was just one pushback</p> <p>22 that we were trying to I think address.</p>	<p style="text-align: right;">Page 432</p> <p>1 was the reason why the price went back, was raised</p> <p>2 again; is that fair?</p> <p>3 A. The shelf protection issue.</p> <p>4 Q. Did the price when it went back up, did</p> <p>5 it go back to the same price that it was prior to</p> <p>6 the reduction, or did it go up further?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: It went back to the</p> <p>9 catalog increase price.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Other than the reason that you just</p> <p>12 articulated as to taking it back to the catalog,</p> <p>13 the prior catalog price, is there any other reason</p> <p>14 whatsoever why Abbott elected to not keep that</p> <p>15 brief reduction in place?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Not that I've been able to</p> <p>18 uncover.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Well, did Abbott have any concerns that</p> <p>21 by raising the price back to the level that it was</p> <p>22 before, that there would be further pushback from</p>

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<p style="text-align: right;">Page 433</p> <p>1 case managers on the Home Infusion side?</p> <p>2 MS. TABACCHI: Object to the form,</p> <p>3 beyond the scope.</p> <p>4 THE WITNESS: I think that would have</p> <p>5 been an obvious concern for anybody in Home</p> <p>6 Infusion. I mean that's why we went forward. So</p> <p>7 to say that we didn't get what we asked for, you</p> <p>8 know, would have left some amount of concern.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. How was that concern, that residual</p> <p>11 concern, addressed?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: It wasn't.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. What was your involvement, you, Mike</p> <p>16 Sellers, what was your involvement in the decision</p> <p>17 to reduce the list price or raise the list price?</p> <p>18 MS. TABACCHI: Object as beyond the</p> <p>19 scope.</p> <p>20 THE WITNESS: I didn't have any</p> <p>21 involvement other than I was made aware by Dave</p> <p>22 Brincks, who was my manager of contracting at the</p>	<p style="text-align: right;">Page 435</p> <p>1 movement, but I know he held a number of positions</p> <p>2 on the HBS side, and he was the one that was</p> <p>3 originally aware of it. So whether he was aware</p> <p>4 of it the next time we had a catalog change, I</p> <p>5 don't know.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Well, who within HBS would have needed</p> <p>8 to approve the initial reduction that was</p> <p>9 reported?</p> <p>10 A. From what I understand, Gerry Eichhorn</p> <p>11 was one. He was in HBS Contract Marketing at the</p> <p>12 time. He was a manager within HBS Contract</p> <p>13 Marketing.</p> <p>14 He reviewed it with Mark Seabee,</p> <p>15 who was the marketing manager for that segment of</p> <p>16 products on the HBS side. I believe those were</p> <p>17 the two that made the decision.</p> <p>18 Q. Would they have needed to receive</p> <p>19 approval from anyone else to do that?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Obviously Harry Adams felt</p> <p>22 that he had to approve it.</p>
<p style="text-align: right;">Page 434</p> <p>1 time, of the objection. Virginia Tobiason may</p> <p>2 have been part of that communication, I'm not</p> <p>3 sure. And I understood that he was going to go</p> <p>4 and talk to the HBS side to see if we could get</p> <p>5 some consideration on that.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Putting on your Abbott hat again, why</p> <p>8 when Abbott after that point in time looked at its</p> <p>9 catalog pricing, why didn't it reduce the</p> <p>10 vancomycin pricing?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I think as we've said all</p> <p>13 along, the list price control was on the hospital</p> <p>14 side and it remained on the hospital side, which</p> <p>15 is where it should have been. That's where the</p> <p>16 vast majority of the business for the products</p> <p>17 were.</p> <p>18 I'm not sure. It fell off of our</p> <p>19 radar scope in Home Infusion at some point in</p> <p>20 time, and I'm not sure what tenure Gerry Eichhorn</p> <p>21 had beyond that in Contract Marketing. I'm not</p> <p>22 familiar with the ins and outs of his career</p>	<p style="text-align: right;">Page 436</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. And then is it fair to say that they</p> <p>3 didn't consult with Harry Adams?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: In reading the testimony,</p> <p>6 it doesn't sound like they consulted with Harry</p> <p>7 Adams.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Because Mr. Adams was the one who --</p> <p>10 A. Objected.</p> <p>11 Q. -- objected and saw to it that the</p> <p>12 pricing was reversed back to what the prior</p> <p>13 catalog pricing was.</p> <p>14 A. Yes.</p> <p>15 Q. Why did Mr. Adams do that?</p> <p>16 MS. TABACCHI: Objection, asked and</p> <p>17 answered.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Other than what you've already testified</p> <p>20 to. Any other reason?</p> <p>21 A. Nothing other than Harry Adams was</p> <p>22 responsible for relationships with wholesalers.</p>

<p style="text-align: right;">Page 437</p> <p>1 So he had infinite knowledge with regard to what 2 was an obligation that we might have to our 3 wholesalers that Gerry Eichhorn probably was not 4 privy to, nor would he necessarily have to know. 5 Q. What communications did Abbott have with 6 wholesalers once the reduction was made? 7 MS. TABACCHI: Object to the form, 8 beyond the scope. 9 THE WITNESS: I'm not sure what 10 communications were sent out with regard to that. 11 Typically, when a price is changed 12 or was changed for a product, there was a 13 communication sent out to all wholesalers so they 14 could update their systems. And Harry Adams 15 usually was the person that was responsible for 16 that. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Are those Harry-grams? 19 A. They have become known in the industry 20 as Harry-grams, yes. 21 Q. Did Abbott receive any communication 22 back from wholesalers concerning this decision to</p>	<p style="text-align: right;">Page 439</p> <p>1 in 1995 to Medicare, Abbott was aware that 2 vancomycin was reimbursed by Medicare in 1995; 3 correct? 4 MS. TABACCHI: Objection, beyond the 5 scope. 6 THE WITNESS: There was some time period 7 that vanco was reimbursed under Medicare Part B, 8 sometime in early '90s to around I believe in '95 9 where Medicare ceased to reimburse for vancomycin, 10 or covered that therapy, let me put it that way, 11 they ceased to cover that therapy. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. And Abbott Home Infusion would bill 14 Medicare for vancomycin that it dispensed; 15 wouldn't it? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: They may have. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. What reimbursement did Abbott seek on 20 the vancomycin that it billed to Medicare? 21 MS. TABACCHI: Object to the form, 22 beyond the scope of the Notice.</p>
<p style="text-align: right;">Page 438</p> <p>1 briefly, for a brief period of time, to reduce the 2 vancomycin list price? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I'm not aware of any 5 communication. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Did the fact that case managers were 8 raising concerns about Abbott's list pricing on 9 the vancomycin in 1995 raise a question with 10 Abbott about the relationship between its list 11 pricing and Medicare or Medicaid or third-party 12 reimbursement? 13 MS. TABACCHI: Object to the form, 14 beyond the scope. 15 THE WITNESS: With regard to Abbott, no. 16 With regard to Home Infusion, not a major concern 17 primarily because payors paid what they wanted to 18 pay, and there was no way to anticipate what a 19 case manager would propose or say their limit of 20 payment would be. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Well, for vancomycin when it was billed</p>	<p style="text-align: right;">Page 440</p> <p>1 THE WITNESS: On any of our claims, I 2 would have expected to see our usual and customary 3 charge. But that wasn't necessarily what we 4 expected to be reimbursed. I mean we expected it 5 to be something less than that. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Well, did you have an understanding or 8 did Abbott have an understanding as to whether 9 Abbott's Home Infusion billed AWP under J-codes 10 for vancomycin? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: I can't comment on the 13 detail of what we billed in terms of a J-code. I 14 would assume you've got billing claims that would 15 tell you that. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Well, would it surprise you to learn 18 that Abbott billed for vancomycin seeking 19 reimbursement from Medicare at AWP? 20 A. Again, I don't have that kind of detail 21 to be expecting or surprised. 22 Q. Other than who you testified to to date,</p>

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<p style="text-align: right;">Page 441</p> <p>1 were there any other individuals involved in the 2 1995 vancomycin brief price reduction? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: The only name I recall 5 seeing in documents and in testimony would be 6 Jerrie Cicerale. I believe there was a 7 communication from Gerry Eichhorn to Jerrie 8 telling her to reduce the prices and to report 9 those prices, which would have been her normal job 10 regardless of whether the prices had gone up or 11 down. Any change in our published prices would 12 have caused her to report those published price 13 changes. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Other than doing the actual reporting of 16 the price changes, was Jerrie Cicerale involved in 17 the deliberations concerning either the reduction 18 of the vancomycin pricing or the decision to raise 19 it again? 20 A. No. 21 Q. Was there anyone else involved in the 22 deliberations either to drop the vancomycin list</p>	<p style="text-align: right;">Page 443</p> <p>1 That catalog included some price 2 changes that had been reviewed, developed and 3 reviewed, with HPD management at the time, soon to 4 be Hospira management, prior to the spin obviously 5 because we had to have the prices ready and a 6 presentation of changes and so on available so we 7 could on the first day of spin communicate them. 8 Q. Why was the decision made to make those 9 price changes on the first day of the Hospira spin 10 as opposed to prior to that point in time? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: Ordinarily our catalog 13 price change that we, price changes that we went 14 through, throughout the time period were typically 15 done in the spring, but we tried not to be 16 predictable. So the date of catalog price 17 changes, I think if you look at our published 18 catalogs throughout that time period, the date 19 moves back and forth. It may have been in March, 20 some may have been in April, some may have been in 21 May. 22 While that fluctuation wasn't</p>
<p style="text-align: right;">Page 442</p> <p>1 price or to raise it up? 2 A. Not that I recall. 3 Q. Now, in 2003 just prior to the spin of 4 Hospira, Abbott HPD executives made a decision to 5 make price adjustments to certain products; is 6 that fair? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: Hospira spun in 2004. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Okay. Fair enough. In late 2003 or 11 early 2004 just prior to the Hospira spin, I 12 believe you testified, sir, back in November that 13 there were some decision making with regard to 14 making price adjustments to certain Hospital 15 Product Division products, either prior to or at 16 the time of the Hospira spin. 17 MS. TABACCHI: Object to the form. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Is that fair? 20 A. We published a new catalog effective 21 April 3rd I believe of 2004 which was the first 22 workday of spin for Hospira.</p>	<p style="text-align: right;">Page 444</p> <p>1 programmed, I mean we didn't decide that we're 2 going to change it in May this year and next year 3 we're going to, it was intended not to be 4 predictable, primarily due to the fact that 5 wholesalers have a tendency, or had a tendency at 6 the time, to anticipate price changes and buy a 7 lot of stock and stock up and thereby benefit from 8 any price changes. We always tried to discourage 9 wholesalers from anticipating and stocking because 10 our inventory plans never contemplated a load of 11 product being at one wholesaler or another and 12 therefore not being available to all of our 13 customers. So we tried not to be predictable. 14 In the case of 2004, we had done a 15 catalog adjustment in 2003, we had also done a 16 catalog adjustment in 2002. The 2004 adjustment 17 was just intended to be the same type of 18 adjustment that we had done in the prior two 19 years. And because we were spinning and because 20 we had to come out with a catalog that said 21 "Hospira" instead of "Abbott," it just made sense 22 to have the two coincide.</p>

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<p style="text-align: right;">Page 445</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Well, is it fair to say that at least</p> <p>3 for the subject drugs, or some of the subject</p> <p>4 drugs, including vancomycin, sodium chloride, and</p> <p>5 dextrose, that the price adjustment that occurred</p> <p>6 on the first day of the spin that Abbott's HPD</p> <p>7 employees were involved with, you know, prior to</p> <p>8 that point in time, that there were some pretty</p> <p>9 substantial reductions in list pricing, wasn't</p> <p>10 there, or catalog pricing?</p> <p>11 MS. TABACCHI: Object to the form,</p> <p>12 beyond the scope of the Notice.</p> <p>13 THE WITNESS: I don't have the details</p> <p>14 of those adjustments.</p> <p>15 Again, those adjustments I believe</p> <p>16 were consistent with changes that we made in 2002</p> <p>17 and 2003. After 2001 we had a policy of making</p> <p>18 sure that our WAC prices were set more relevant to</p> <p>19 our contract price ranges for all products. And</p> <p>20 so implementing that policy caused some prices to</p> <p>21 go up, some prices to go down, in all three of</p> <p>22 those years. In none of those three years is it</p>	<p style="text-align: right;">Page 447</p> <p>1 proposal was reviewed with our legal department as</p> <p>2 well as HPD management, and so they signed off on,</p> <p>3 as well as the controllership, again, going back</p> <p>4 to the finance department.</p> <p>5 Q. Would Rick Gonzalez have signed off on</p> <p>6 these price changes that were implemented the</p> <p>7 first day of the Hospira spin?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Who was the president? Was it Chris</p> <p>12 Begley?</p> <p>13 A. Chris Begley was the president of</p> <p>14 Hospital Products Division and was slated to be</p> <p>15 the CEO of Hospira.</p> <p>16 Q. Would he sign off or did he sign off on</p> <p>17 those price changes?</p> <p>18 A. In aggregate they were reviewed with</p> <p>19 Chris, yes.</p> <p>20 Q. Given the price change list price policy</p> <p>21 that we went over in your first deposition, why</p> <p>22 for certain Abbott HPD products, including some of</p>
<p style="text-align: right;">Page 446</p> <p>1 my recollection that there was an across the board</p> <p>2 either increase or decrease. It was list number</p> <p>3 specific throughout the whole catalog.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Would there be any reason why given the</p> <p>6 pricing policy that we went over at the last time</p> <p>7 you were deposed, why in 2004 Abbott's HPD</p> <p>8 executives -- well, let me ask you this. Strike</p> <p>9 that.</p> <p>10 Before we get to that, who was</p> <p>11 involved in late 2003, early 2004, in the decision</p> <p>12 making regarding the list price changes that were</p> <p>13 ultimately published on the first day of the</p> <p>14 Hospira spin?</p> <p>15 A. We used our normal process, which</p> <p>16 included representatives from our finance</p> <p>17 department, it included representatives from</p> <p>18 Contract Marketing, and it included a review with</p> <p>19 the relevant marketing managers depending on the</p> <p>20 product and so on.</p> <p>21 Once a price was defined that was a</p> <p>22 consensus of that group, then the consolidated</p>	<p style="text-align: right;">Page 448</p> <p>1 the subject drugs in this case, were there price</p> <p>2 reductions in the list price of more than thirty</p> <p>3 percent from the 2003 catalog price to the 2004</p> <p>4 price that was ultimately published on the first</p> <p>5 day of the Hospira spin?</p> <p>6 MS. TABACCHI: Object to the form,</p> <p>7 beyond the scope.</p> <p>8 THE WITNESS: I can't comment with</p> <p>9 regard to the detail.</p> <p>10 I can tell you that we went through</p> <p>11 the same strict process of looking at our contract</p> <p>12 ranges. If we had a decline in our contract</p> <p>13 prices over the prior year or the prior year and a</p> <p>14 half for instance, if you had a brand new product</p> <p>15 introduced prior to the last catalog change, that</p> <p>16 may or may not have been comprehended in the last</p> <p>17 contract change.</p> <p>18 So basically we looked at what had</p> <p>19 changed in our contract ranges and adjusted based</p> <p>20 on that. So if it was ten percent, if it was</p> <p>21 twenty percent, thirty percent, whatever, I mean</p> <p>22 it was what it was.</p>

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<p style="text-align: right;">Page 449</p> <p>1 As I recall, there were some</p> <p>2 products that took increases, there were some</p> <p>3 products that took decreases in all three of those</p> <p>4 years.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. What I'd like to do, sir, is go over</p> <p>7 some documents pertaining to Topic 9.</p> <p>8 (WHEREUPON Exhibit Sellers 024</p> <p>9 was marked as of 3/31/2008.)</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Sir, do you recognize this document?</p> <p>12 (Document tendered to the witness.)</p> <p>13 A. I don't believe I've seen this document</p> <p>14 before.</p> <p>15 Q. Do you know what it is?</p> <p>16 A. It appears to be the subsequent raising</p> <p>17 of the price of vancomycin.</p> <p>18 Q. So this is the direction. And Harry</p> <p>19 Adams is cc'd on it, so does that clue you in as</p> <p>20 to what it might be?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: There's no singe marks.</p>	<p style="text-align: right;">Page 451</p> <p>1 A. I believe this is the document where</p> <p>2 Gerry Eichhorn is communicating to Jerrie Ciceralo</p> <p>3 the price reductions that he had agreed with Dave</p> <p>4 Brincks on. And it was an informational to Mark</p> <p>5 Sebree as well, who was the product manager or</p> <p>6 marketing manager for the product.</p> <p>7 Q. Did this particular version of this</p> <p>8 e-mail come from your computer?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 beyond the scope.</p> <p>11 THE WITNESS: It looks like it did, I</p> <p>12 guess. My name is on the top.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Okay. Sir, this memo from, or this</p> <p>15 e-mail from Mr. Eichhorn to Ms. Ciceralo,</p> <p>16 indicates that it is important to make the changes</p> <p>17 for Alt. Site due to rebate issues as soon as</p> <p>18 possible. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. What were the rebate issues that were</p> <p>21 important to Alt. Site that served as the basis</p> <p>22 for the changes?</p>
<p style="text-align: right;">Page 450</p> <p>1 So I know it wasn't in Harry's file.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. So this is notification to Jerrie</p> <p>4 Ciceralo that the catalog prices need to go back</p> <p>5 to what they were?</p> <p>6 A. It's actually an instruction to</p> <p>7 increase, to move the prices to what they were in</p> <p>8 the April 3, 1995 catalog.</p> <p>9 Q. Prior to the reduction?</p> <p>10 A. Yes.</p> <p>11 (WHEREUPON Exhibit Sellers 025</p> <p>12 was marked as of 3/31/2008.)</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Sir, do you recognize this memo?</p> <p>15 (Document tendered to the witness.)</p> <p>16 A. I've seen it before.</p> <p>17 Q. You're listed on the cc?</p> <p>18 A. Yeah, I am.</p> <p>19 Q. Do you recall receiving this memo?</p> <p>20 A. No, I don't. I'm not doubting that I</p> <p>21 did, but I don't recall it.</p> <p>22 Q. What is this document?</p>	<p style="text-align: right;">Page 452</p> <p>1 MS. TABACCHI: Object to the form,</p> <p>2 beyond the scope.</p> <p>3 THE WITNESS: There were no rebate</p> <p>4 issues. I think that was what Gerry thought, he's</p> <p>5 the author of this, that was just a way that he</p> <p>6 characterized the changes.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Well, did you ever ask Mr. Eichhorn what</p> <p>9 he meant by that?</p> <p>10 A. No.</p> <p>11 MS. TABACCHI: Objection, as beyond the</p> <p>12 scope.</p> <p>13 THE WITNESS: I believe in testimony he</p> <p>14 said that he wasn't sure what he meant by it.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. The request is made that Ms. Ciceralo</p> <p>18 notify Red Book and Medi-Span of the changes ASAP,</p> <p>19 and then there's an indication that they are</p> <p>20 sources for creating the AWP that is important to</p> <p>21 Alt. Site.</p> <p>22 Why was AWP important to Alt. Site?</p>

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<p style="text-align: right;">Page 453</p> <p>1 MS. TABACCHI: Object to the form, 2 beyond the scope. 3 THE WITNESS: Again, this is a Gerry 4 Eichhorn. So how Gerry characterized it -- 5 MR. ANDERSON: Tina, I object to beyond 6 the scope limitation that you're interposing, 7 specifically these questions all fall squarely 8 within Topic 9, and I believe the witness is 9 required to testify on behalf of the corporation 10 with respect to these questions. 11 He appears to be limiting his 12 responses to personal knowledge. You're 13 interposing this objection to scope. Am I missing 14 something here? 15 MS. ST. PETER-GRIFFITH: Just to let you 16 know, we had an agreement that Tina is going to 17 interpose objections, we had this on Day One, to 18 beyond the scope. 19 My position is that they are not 20 beyond the scope. 21 MS. TABACCHI: I won't take silence to 22 my objection as you agreeing with me. But in</p>	<p style="text-align: right;">Page 455</p> <p>1 Q. Why would an employee like Mr. Eichhorn 2 have the impression that AWP was important to 3 Alternate Site? 4 MS. TABACCHI: Object to the form, 5 beyond the scope. 6 THE WITNESS: I think it further 7 emphasizes the fact that the Hospital Business 8 Sector side did not understand at all the Alt. 9 Site or Home Infusion side. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Why does Abbott believe that AWP was not 12 important to Alternate Site? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: It wasn't a key factor in 15 anything, to be honest with you. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Why do you say it wasn't a key factor in 18 anything? 19 MS. TABACCHI: Same objection. 20 THE WITNESS: It wasn't a number we 21 controlled. What we got reimbursed was not a 22 number that we controlled.</p>
<p style="text-align: right;">Page 454</p> <p>1 response to your particular question, Mr. Sellers 2 has provided testimony on behalf of the 3 corporation on this issue. When you get into the 4 details of a very specific e-mail that was 5 authored by somebody else and what a particular 6 person meant by something that was in their 7 e-mail, it's not proper for his corporate 8 testimony. 9 He's testifying about what, you 10 know, he can tell you what Mr. Eichhorn said in 11 his deposition about what he meant by this. 12 MR. ANDERSON: Well, I have some 13 comments about that too as well. 14 MS. ST. PETER-GRIFFITH: Well, let me 15 tell you, Jarrett, we're going to clarify this 16 with my next question. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Sir, was AWP important to Alt. Site? 19 MS. TABACCHI: Object to the form. It's 20 been asked and answered I believe. 21 THE WITNESS: No. 22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 456</p> <p>1 It was a baseline. If you were to 2 go back to these other documents, if I were to say 3 that these other documents were true, and in fact 4 the process, which I haven't said, but if they 5 were, it was no more than a baseline on products 6 for us as well as products manufactured by other 7 companies. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Sir, you just testified that what Abbott 10 was reimbursed was not within Abbott's control. 11 We're going to take a break here because we've got 12 to change the tape, but before we do is it 13 Abbott's testimony that it did not understand that 14 there was a correlation between the list prices 15 that it reported and the reimbursement sought by 16 its Home Infusion business unit for product billed 17 to Medicare and Medicaid? 18 MS. TABACCHI: Object to the form. This 19 has been asked and answered. 20 THE WITNESS: As I've said before, 21 Abbott HPD in its entirety, no, did not understand 22 that.</p>

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<p style="text-align: right;">Page 457</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Did anyone within Abbott understand 3 that? 4 MS. TABACCHI: Objection, asked and 5 answered. 6 THE WITNESS: There may have been a few 7 people within Home Infusion reimbursement that had 8 an understanding of how AWP might or might not 9 have been a factor, either plus or minus or an 10 average AWP, whatever, for a specific payor to a 11 specific provider. But as far as Abbott and as 12 far as Abbott HPD is concerned, there wasn't 13 necessarily that understanding. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Well, someone within Abbott -- well, 16 Home Infusion is within Abbott HPD; is it not? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: Home Infusion was a very 19 small discreet business unit within HPD. It 20 operated differently than any other business 21 segment. So the vast majority of the HPD sales 22 were to hospitals.</p>	<p style="text-align: right;">Page 459</p> <p>1 THE VIDEOGRAPHER: We are back on the 2 record at 12:34 p.m. with the start of Tape No. 3. 3 MICHAEL SELLERS, 4 having been previously duly sworn, was examined 5 and testified further as follows: 6 EXAMINATION 7 (Continuing) 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Mr. Sellers, I'd like to move on to the 10 Home Infusion operations. 11 A. Okay. 12 Q. Just in your personal capacity, how long 13 were you involved with Abbott's Home Infusion? 14 A. I was the general manager from sometime 15 in 1992, I believe probably May or June, I can't 16 remember which, through to February of 2000. And 17 then subsequent to Don Robertson retiring, I 18 picked up Home Infusion again I think sometime in 19 2001 through to its shutdown. 20 Q. What were the business models for 21 Abbott's Home Infusion business unit from 1991 22 until its closure?</p>
<p style="text-align: right;">Page 458</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. But Abbott -- 3 A. So the vast majority of Abbott HPD 4 personnel understood hospitals. Very, very few 5 even were aware that we were selling to anybody 6 other than hospitals. 7 MS. ST. PETER-GRIFFITH: Why don't we 8 take a break at this point in time. Why don't we 9 take a brief lunch break. 10 MS. TABACCHI: Sure. What time do you 11 want to come back? 12 MS. ST. PETER-GRIFFITH: If we can come 13 back at 12:30, that would be great. 14 MS. TABACCHI: Okay. 15 THE VIDEOGRAPHER: We are off the record 16 at 11:55 with the end of Tape 2. 17 (WHEREUPON a lunch recess was 18 taken, and said deposition 19 continued as follows:) 20 21 22</p>	<p style="text-align: right;">Page 460</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Our predominant business 3 model was a contract with hospitals which helped 4 them get into the Home Infusion business. It was 5 intended to be an evolutionary program where 6 upfront we might have provided more services 7 because of the novelty of the program to the 8 hospital entity, and then over time the hospital 9 would gradually take on more and more of those 10 services, and we would take a lesser and lesser 11 role. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Was that the revenue share business 14 model? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: I've heard it referred to 17 as revenue share. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Under the revenue share business model, 20 what would Abbott provide as part of the 21 contractual relationship? 22 A. I believe that we offered a pretty broad</p>

<p style="text-align: right;">Page 461</p> <p>1 menu of services and options that could be 2 negotiated into those arrangements. 3 Again, since we were talking about 4 in a number of cases taking an organization who 5 wasn't really familiar with what we called 6 high-tech home care or the running of a pharmacy 7 for home care, we might begin by offering our 8 pharmacy services out of our own pharmacies. We 9 would definitely offer training using our pharmacy 10 managers or our pharmacy staff to train our 11 hospital clients on the operation, the 12 development, and the procedures needed to operate 13 a pharmacy that was JCAHO accredited. 14 We provided engineering assistance 15 in the development of their home infusion 16 facility, if they were going to build a home 17 infusion facility. 18 Q. Let me stop you right there. Would 19 Abbott ever build out the home infusion facility 20 for them? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: No.</p>	<p style="text-align: right;">Page 463</p> <p>1 Q. In providing the consigned inventory 2 that Abbott provided under this particular 3 business model, how did it document or reflect the 4 fair market value for the inventory that it 5 consigned? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: We never communicated to 8 our clients, to my knowledge, a valuation of the 9 inventory. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Would Abbott provide the consigned 12 inventory at Abbott's factory cost and delivery 13 cost, factory and delivery cost, to the revenue 14 share partner? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: It was consigned 17 inventory. So it was comprehended in the 18 arrangement. 19 So the product was moved into the 20 warehouse, into the client's warehouse, as they 21 needed it. We inventoried it annually, and any 22 shrinkage that was not explainable by pharmacy</p>
<p style="text-align: right;">Page 462</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Okay. Go ahead. 3 A. We would have, you know, we might be 4 the, might provide the lead engineering interface 5 for building it out, but it wasn't our practice to 6 fund the build-out of a pharmacy. 7 We provided reimbursement services, 8 we provided training with regard to reimbursement, 9 with regard to case management handling, with 10 regard to contracting with payors. We offered 11 them an ability to come together with other 12 clients so that they could share their experiences 13 with one another and give them some peer 14 relationships in the industry. 15 We provided consigned inventory of 16 Abbott product. And we provided the CHIP system 17 which they could operate in a number of ways in 18 terms of a timeshare, in terms of if they wanted 19 to run it on their own computers, whatever. 20 So it was quite a flexible menu of 21 services that all had to be comprehended in the 22 arrangement.</p>	<p style="text-align: right;">Page 464</p> <p>1 utilization would be reconciled with the client, 2 and -- 3 BY MS. ST. PETER-GRIFFITH: 4 Q. In that reconciliation what charge would 5 be paid? 6 MS. TABACCHI: Object to the form. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Or what charge would be charged? 9 MS. TABACCHI: Same objection. 10 THE WITNESS: I believe it was a 11 negotiable process, as I remember it, but our 12 baseline, we would have chosen a GPO agreement 13 that we would have called representative. And 14 that may have varied year to year, but we would 15 have picked a known market price. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. At any time for the consigned 18 inventory -- let me ask you this: For the 19 consigned inventory, did that also include Ross 20 and Abbott devices? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: Yes.</p>

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<p style="text-align: right;">Page 465</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. When the revenue share partner utilized</p> <p>3 the consigned product or device, would there be a</p> <p>4 separate charge for that particular product item</p> <p>5 or particular device that would be charged</p> <p>6 separately to the revenue share partner, or would</p> <p>7 there just be an aggregate collection of a</p> <p>8 percentage of revenue?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: There was no line item</p> <p>11 charge to the client.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. For the services that were provided that</p> <p>14 you described, engineering, pharmacy, training</p> <p>15 procedures, reimbursement services, access to the</p> <p>16 CHIP system, would Abbott document or reflect the</p> <p>17 fair market value for those services that it</p> <p>18 rendered to the revenue share partner?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I'm not aware that we ever</p> <p>21 did.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 467</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. What other upfront charges would there</p> <p>3 be?</p> <p>4 A. Training, warehouse setup, those kind of</p> <p>5 things.</p> <p>6 Q. Would Abbott have any mechanism for</p> <p>7 tracking the value of those upfront services that</p> <p>8 were provided?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: We had an ability to</p> <p>11 identify what our costs were for all of those</p> <p>12 upfront, and we used that in determining what our</p> <p>13 revenue share would be on future agreements.</p> <p>14 So we did go back and look at some</p> <p>15 of our startups to validate that we were</p> <p>16 adequately burdening future agreements.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Would the individual files for the</p> <p>19 revenue share partners reflect the tracking of</p> <p>20 those costs?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Typically not, no.</p>
<p style="text-align: right;">Page 466</p> <p>1 Q. What would the compensation be for those</p> <p>2 services?</p> <p>3 A. It was all comprehended in the total</p> <p>4 agreement. So whatever our percentage of</p> <p>5 collections on each of the therapies would</p> <p>6 comprehend what other services we provided.</p> <p>7 Q. Would you charge separately for the</p> <p>8 engineering services that I presume would be --</p> <p>9 well, let me ask you this. Strike that.</p> <p>10 Would the engineering services</p> <p>11 generally be an upfront service because you're</p> <p>12 getting the revenue share partner a facility and</p> <p>13 up to speed, is that fair to say?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: Yeah. There were a number</p> <p>16 of startup costs, and that was one of them, that</p> <p>17 would be one of them. It would be an upfront</p> <p>18 cost, but it was figured into the overall revenue</p> <p>19 share for the term of the agreement that we</p> <p>20 signed, whether it was a three-year contract or a</p> <p>21 five-year contract, it amortized those upfront</p> <p>22 charges across the full term.</p>	<p style="text-align: right;">Page 468</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Under the revenue share model would</p> <p>3 Abbott Home Infusion share in revenues collected</p> <p>4 from Medicare and Medicaid?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: In all the cases that I</p> <p>7 recall it was every payor.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Would the payors be broken down on a per</p> <p>10 patient basis? For example, would you take a,</p> <p>11 would Abbott be able to document that it's taking</p> <p>12 a forty percent share, for example, in the</p> <p>13 Medicare reimbursement attributable to Patient</p> <p>14 John Smith?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: The system, the CHIP</p> <p>17 system, kept track of whatever services and claims</p> <p>18 were delivered on a patient. That patient would</p> <p>19 have been classified to a particular therapy or</p> <p>20 multiple therapies because in a lot of cases a</p> <p>21 nutritional patient got nutritional therapy, but</p> <p>22 they also might have had times when they got</p>

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<p style="text-align: right;">Page 469</p> <p>1 antibiotic therapy, or there might have been times 2 when they got hydration therapy. 3 So it was really, it was less 4 patient specific, it was more payor therapy 5 definition within the system which would then 6 define, the therapy would then define the revenue 7 share percentage. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. If a particular patient was denied 10 reimbursement by Medicare or Medicaid, how would 11 Abbott, if at all, charge its revenue share 12 partner for the product that was utilized but for 13 which reimbursement was not paid by Medicare or 14 Medicaid? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: We wouldn't get, we would 17 get basically our revenue share of that collection 18 which was -- 19 BY MS. ST. PETER-GRIFFITH: 20 Q. Zero percent? 21 A. -- our revenue share of zero would be 22 zero.</p>	<p style="text-align: right;">Page 471</p> <p>1 beyond the scope. 2 THE WITNESS: You know, I don't have 3 specific numbers. I think in general in the, 4 again, I can speak from '92 on, in general 5 division margin basis we were in the eighteen to 6 twenty percent division margin. And that's prior 7 to corporate burdening. So all the corporate 8 costs aren't put on that. So net at the end of 9 the day, it was less whatever we paid for the big 10 corporate offices and so on. 11 That's what we reported to the 12 division was somewhere in the eighteen to 13 twenty-two percent range. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. How did the reimbursement department 16 work? 17 A. Very hard. 18 Q. Can you describe the mechanics of how it 19 operated? 20 A. Typically, our reimbursement team was 21 broken into subteams, and those teams were aligned 22 with our clients. So our clients, when they were</p>
<p style="text-align: right;">Page 470</p> <p>1 Q. Did the revenue share business model 2 change over time? 3 A. Well, it changed per client. 4 Every client, as I said, might have 5 evolved from a more comprehensive array of 6 services and products that we delivered originally 7 to something less later on, or clients decided 8 early up that they wanted to do more, and so their 9 arrangement, the arrangements by client were 10 different. 11 The contract or the risk share 12 contract that we had, that general format, general 13 structure, didn't change. 14 Q. When was this revenue share business 15 model first put into place? 16 A. My recollection is '83 or '84. 17 Q. From '91 to 2003 can you give a broad 18 overview, I'm not asking you for particular, you 19 know, to the penny dollar amounts, but a broad 20 overview of the profits and profit margins enjoyed 21 by the Home Infusion business unit? 22 MS. TABACCHI: Object to the form,</p>	<p style="text-align: right;">Page 472</p> <p>1 operating, had particular people that they could 2 get used to and our people could get used to our 3 clients, could understand our clients and our 4 clients could understand us. 5 So basically we were trying to work 6 as hand-in-hand as we could, and one way to do 7 that was to establish a small team that could work 8 with each of our clients and be responsible for 9 that. 10 Again, depending on what the client 11 wanted us to do, we might handle verification of 12 insurance, we definitely had to get assignment of 13 benefit paperwork in our hands -- 14 Q. Let me stop you right there. Would 15 Abbott ever accept assignment of benefits on 16 behalf of its revenue share partners itself under 17 Abbott's name? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: It may have. When we were 20 operating through our pharmacies, it may have. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. What about when you weren't operating</p>

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<p style="text-align: right;">Page 473</p> <p>1 through your pharmacies?</p> <p>2 A. No. But you had to have via AOB. So in</p> <p>3 some cases the clients did all that. In some</p> <p>4 cases it was part of the services we offered.</p> <p>5 Once the prescription was filled,</p> <p>6 shipped, and accepted, then that team would</p> <p>7 develop the claim and file the claim. They would</p> <p>8 be the contact person for the payor in the name</p> <p>9 of, in most cases, in the name of our client, and</p> <p>10 they would follow up on that claim.</p> <p>11 So there was in general a timeframe</p> <p>12 where we would expect a claim to be processed. If</p> <p>13 we had not gotten a response in that timeframe,</p> <p>14 someone from that team would call the payor and</p> <p>15 follow up on the claim, when, where is it, when do</p> <p>16 you expect to pay it.</p> <p>17 We would get data from our client's</p> <p>18 lockbox as to payments that were made as well as</p> <p>19 any documentation on claim payment. Once we'd get</p> <p>20 that back, we would bill for copays because then</p> <p>21 we would know what the allowable was. There would</p> <p>22 be follow up on the copays. And then if there was</p>	<p style="text-align: right;">Page 475</p> <p>1 because you didn't know what your allowable was</p> <p>2 going to be.</p> <p>3 Q. In terms of the claim process that you</p> <p>4 described where you said you developed the claim,</p> <p>5 filed the claim, followed up on the claim, did</p> <p>6 that include claims submitted to Medicare and</p> <p>7 Medicaid?</p> <p>8 A. Yes, all payors.</p> <p>9 Q. So you bill the patient, you follow up.</p> <p>10 Now, if claims were disallowed,</p> <p>11 would Abbott get involved with the process of</p> <p>12 claims dispute, for lack of a better term?</p> <p>13 A. Yes. If we didn't accept the</p> <p>14 disallowance, or whatever you want to call it, we</p> <p>15 would do the appeal. And in some cases we'd do</p> <p>16 it, we'd consult with the client before we did an</p> <p>17 appeal. And they may or may not support it, or we</p> <p>18 might not support it and they would want us to do</p> <p>19 it. So it was really quite a close working</p> <p>20 relationship between us and our clients.</p> <p>21 Q. If there was a dispute over whether or</p> <p>22 not to pursue a disallowed claim, if there was a</p>
<p style="text-align: right;">Page 474</p> <p>1 any adjudication of the claim itself, they would</p> <p>2 handle that. In other words, if we didn't agree</p> <p>3 with payment for one reason or another, perhaps we</p> <p>4 suspected they had not interpreted our claim data</p> <p>5 correctly, that kind of follow up would be done as</p> <p>6 well.</p> <p>7 Q. In terms of, I want to go back over</p> <p>8 something you just said. You said that you billed</p> <p>9 for copays once you received the data from the</p> <p>10 lockbox because at that point Abbott would know</p> <p>11 what the allowable was. What do you mean by that?</p> <p>12 A. Well, we could only bill customers, or</p> <p>13 patients, once we knew what the allowable charge</p> <p>14 was. We couldn't bill the copays on what our</p> <p>15 original claim was because the payor would come</p> <p>16 back inevitably and say you're only allowed to</p> <p>17 charge "X" amount, we're going to pay</p> <p>18 seventy-five percent of it, or we're going to pay</p> <p>19 eighty percent of it, whatever, and then they</p> <p>20 would say the patient is liable for the</p> <p>21 difference.</p> <p>22 So you couldn't bill it early</p>	<p style="text-align: right;">Page 476</p> <p>1 dispute between Abbott and the revenue share</p> <p>2 partner, was there a contractual provision as to</p> <p>3 whose opinion won out?</p> <p>4 A. No.</p> <p>5 Q. How would that dispute be resolved?</p> <p>6 A. Well, we'd continue to talk about it</p> <p>7 until we came up with an agreement.</p> <p>8 I would say that if it really came</p> <p>9 down to a point of absolute disagreement, we would</p> <p>10 operate under the same retail rule that everybody</p> <p>11 else does, and that is the customer is always</p> <p>12 right.</p> <p>13 Q. Okay. Did the reimbursement staff have</p> <p>14 any particular special handling that it utilized</p> <p>15 for processing claims to Medicare or Medicaid?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Not that I'm aware of.</p> <p>18 Handling of every payor was unique, and, in fact,</p> <p>19 handling each Medicaid state was unique, and in a</p> <p>20 lot of cases handling each Medicare carrier was</p> <p>21 unique.</p> <p>22 And since we were operating</p>

<p style="text-align: right;">Page 477</p> <p>1 nationally, we weren't just operating in one 2 specific region, each of the teams may have had 3 different processes for handling payor claims 4 regardless of whether it was other third parties 5 or Medicare/Medicaid. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Who within the reimbursement -- let 8 me strike that. 9 Who within Abbott Home Infusion 10 understood how Medicare and Medicaid reimbursed? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: Well, again, across this 13 whole time period it was the responsibility of the 14 reimbursement department to understand, for our 15 clients and for the regions we were billing in it 16 was their responsibility to understand how to 17 bill. 18 They may have also attempted to 19 understand how we got paid, but I can tell you it 20 varied across that time period and it varied by 21 carrier. 22 So I'm not sure there was any one</p>	<p style="text-align: right;">Page 479</p> <p>1 at that time what kind of impacts were affecting 2 them. 3 So from that standpoint, I may have 4 been told in that time period. But I didn't have 5 a detailed understanding of what specifically each 6 area was doing with regard to Medicare and 7 Medicaid. 8 My main management process at that 9 time was to look at the percentage of collections 10 that or percentage of U&Cs that we were getting 11 and was that going up or was that going down, were 12 we getting better reimbursement or were we getting 13 worse. And that was really one of the metrics 14 that I remember talking to reimbursement about. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Over the period from 1991 until the time 17 of the Home Infusion business unit's closure, what 18 were the annual revenues? We talked about profit 19 a little while ago, but what were the annual 20 revenues? 21 MS. TABACCHI: Object to the form, 22 beyond the scope.</p>
<p style="text-align: right;">Page 478</p> <p>1 person that knew what all the things we were 2 doing. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. But certainly the reimbursement staff 5 understood the mechanics of the Medicare/Medicaid 6 reimbursement; is that fair? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: They understood the 9 mechanics of reimbursement and the claims, that 10 kind of process. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. In your role with Home Infusion, did you 13 have an understanding as to how Medicare or 14 Medicaid reimbursed? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: Not specifically. You 17 know, I may have been told. I had monthly reviews 18 where the leaders of each team came in and 19 presented how things were going, what they 20 collected, what they billed, what their bad debt 21 percentage was, where they were running into 22 difficulties, and it was my attempt to understand</p>	<p style="text-align: right;">Page 480</p> <p>1 THE WITNESS: I believe that when I 2 started in '92, as I recall, we were about 32 to 3 \$34 million, either around \$32 million in 4 billings. In or around '95 or '96, we hit our 5 maximum of I believe a little over \$42 million in 6 revenue, and then it kind of plateaued. And then 7 after we made the decision to close down, it 8 started to tail off because we didn't renew 9 agreements. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. When was the decision made to close the 12 business unit? 13 A. I recall it being made sometime in late 14 1997. 15 Q. Who made the decision? 16 A. It was a, Don Robertson and I consulted 17 on the recommendation, we took the recommendation 18 forward to Rick Gonzalez, who was the president of 19 HPD at the time, and then it was reviewed with 20 corporate, and then we were given the go-ahead. 21 Q. Who within corporate reviewed it? 22 A. It was reviewed in a meeting with Miles</p>

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<p style="text-align: right;">Page 481</p> <p>1 White and Bob Parkinson.</p> <p>2 Q. What were the reasons behind the</p> <p>3 decision to close the business unit?</p> <p>4 A. As I said, our revenue had plateaued,</p> <p>5 the market for new clients was drying up. We</p> <p>6 started to use this business model in, as I said,</p> <p>7 '84 I believe is what I told you before.</p> <p>8 So by 1997 it had been thirteen</p> <p>9 years. In that time period, hospitals that wanted</p> <p>10 to get into the business had gotten into the</p> <p>11 business. So we were seeing fewer and fewer</p> <p>12 prospects for future businesses. And those that</p> <p>13 had gotten into the business wanted a more</p> <p>14 independent approach.</p> <p>15 So we saw as we looked at the</p> <p>16 contracts that we had with our existing clients</p> <p>17 that they were going to start that evolution, as I</p> <p>18 said, of ticking away and taking more and more of</p> <p>19 the responsibility. So we were forecasting that</p> <p>20 our sales were going to at best hold and most</p> <p>21 probably decline and that the profitability of</p> <p>22 business would decline. So it didn't make sense</p>	<p style="text-align: right;">Page 483</p> <p>1 our clients. If they wanted to transition earlier</p> <p>2 than the end of their agreement, we would help</p> <p>3 them do that. But if they wanted to live out</p> <p>4 their agreement, we would live out the agreement</p> <p>5 that we had in place.</p> <p>6 Q. From '84 until the closure, was the</p> <p>7 revenue share model the only business model within</p> <p>8 Abbott Home Infusion?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: No, but it was the</p> <p>11 predominant one.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. What other business models were there?</p> <p>14 A. Well, we had an agreement in our New</p> <p>15 Jersey pharmacy for a while. We were dealing with</p> <p>16 the Health Insurance Plan of New York, and we were</p> <p>17 delivering for them daily doses of chemotherapy</p> <p>18 for their physician clinics all throughout the New</p> <p>19 York metropolitan area. That wasn't a revenue</p> <p>20 share, it was a purely a fee-for-service type of</p> <p>21 arrangement operating out of our pharmacy.</p> <p>22 There were also some handful of</p>
<p style="text-align: right;">Page 482</p> <p>1 to continue it.</p> <p>2 Q. Why didn't it just close in '97? Why</p> <p>3 the phased process?</p> <p>4 A. We talked about that, but to shut it</p> <p>5 down clean, cold, cold turkey shutdown as I would</p> <p>6 call it in '97, we would have had to have gone to</p> <p>7 our clients and said hey, all of these services</p> <p>8 that we're giving you, they're gone tomorrow.</p> <p>9 In light of the fact that the</p> <p>10 majority of our clients, in fact all of our</p> <p>11 clients, were hospitals, hospitals were our</p> <p>12 biggest customer. The Hospital Products Division,</p> <p>13 that's why we were called the Hospital Products</p> <p>14 Division because ninety percent of what we sold</p> <p>15 went to hospitals. We didn't feel that leaving</p> <p>16 our clients in a lurch by just saying we're</p> <p>17 closing down, we're shutting down, was the right</p> <p>18 thing to do.</p> <p>19 So we made the decision that we</p> <p>20 would live out the agreements we had. There were</p> <p>21 some that would expire across the next five years.</p> <p>22 So we made that decision that we would work with</p>	<p style="text-align: right;">Page 484</p> <p>1 what I call holdover patients from back when home</p> <p>2 care was purely a direct provider.</p> <p>3 Q. A direct pharmacy?</p> <p>4 A. Right. And by a handful I mean probably</p> <p>5 less than ten patients across the country that we</p> <p>6 had not transitioned to our clients for one reason</p> <p>7 or another.</p> <p>8 Normally, for instance if we had a</p> <p>9 patient in Michigan and we signed the agreement</p> <p>10 with the University of Michigan, normally we would</p> <p>11 transfer that patient and have the University of</p> <p>12 Michigan handle them, they were much closer to the</p> <p>13 patient, and it would make much more sense. But,</p> <p>14 like I said, there was some residual of long-term</p> <p>15 infusion patients that we were still dealing with,</p> <p>16 a handful, eight to ten at the most.</p> <p>17 Q. Other than the limited fee-for-service</p> <p>18 arrangements that you had and the direct</p> <p>19 pharmacies of less than ten patients, were there</p> <p>20 any other business models for Home Infusion?</p> <p>21 A. The only other one we had was introduced</p> <p>22 probably in '97. And that was with a, again, a</p>

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<p style="text-align: right;">Page 485</p> <p>1 very few number of customers, we had a licensing 2 agreement on the CHIP system that didn't include a 3 revenue share, it was a fixed price. 4 Q. When did Abbott pharmacies -- let me ask 5 you this: Did the Abbott pharmacies also close 6 down? 7 A. Yes. 8 MS. TABACCHI: Object to the form. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. When did they close down? 11 A. Variety of time. I believe we closed 12 the New Jersey pharmacy in 1996, and that 13 coincided with our loss of the Health Insurance 14 Plan contract. It was either '96 or early '97, 15 but it was pre-shutdown decision. 16 LA, our pharmacy in LA, was shut 17 down in '98, '99. And I believe our Chicago 18 pharmacy was shut down in 2001. 19 Q. Was there an Atlanta pharmacy? 20 A. The Atlanta pharmacy was shut down prior 21 to 1992 because it was not in operation when I 22 took over.</p>	<p style="text-align: right;">Page 487</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. We talked earlier at your first day of 3 deposition about communications that Abbott had 4 with state or federal Medicare and Medicaid 5 officials about its pricing. And you testified 6 that Abbott did not have any communications with 7 state or federal Medicare or Medicaid officials 8 about questions concerning how Medicare or 9 Medicaid reimbursement worked, is that fair, other 10 than the individual questions raised by the 11 reimbursement staff? 12 MS. TABACCHI: Object to the form, 13 beyond the scope of the Notice. 14 THE WITNESS: I believe that's the case. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Is there any other communication that 17 Abbott is aware of that it had with Medicare or 18 Medicaid officials concerning pricing of the 19 subject drugs or AWP related issues associated 20 with the subject drugs? 21 MS. TABACCHI: Objection, beyond the 22 scope, object to the form.</p>
<p style="text-align: right;">Page 486</p> <p>1 Q. Did Abbott continue to maintain its 2 pharmacy licenses? 3 MS. TABACCHI: Objection, beyond the 4 scope. 5 THE WITNESS: No. 6 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Do you know when Abbott surrendered its 9 pharmacy licenses? 10 MS. TABACCHI: Same objection. 11 THE WITNESS: I would assume it to be at 12 or close proximity to the closure. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. To the closure of Home Infusion? 15 A. No, to the closure of whatever specific 16 pharmacy. 17 Q. Is there anything else that you can 18 think of about the Home Infusion business models 19 that we haven't discussed here today? 20 MS. TABACCHI: Objection to the form and 21 beyond the scope. 22 THE WITNESS: No.</p>	<p style="text-align: right;">Page 488</p> <p>1 THE WITNESS: Other than the required 2 communication for the State of Texas, I'm not 3 aware of any communications with regard to price 4 or AWP. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. What information is Abbott aware of that 7 provides the basis for its statement that it never 8 provided false or misleading information to any 9 state or federal Medicare or Medicaid official? 10 MS. TABACCHI: Object to the form, 11 beyond the scope of the Notice. 12 Can you refer me to what topic do 13 you think it falls within? 14 MS. ST. PETER-GRIFFITH: Sure. It falls 15 within Topic 12, Items 1, 2, or 3. 16 MS. TABACCHI: It's my understanding 17 that those topics were withdrawn. 18 MS. ST. PETER-GRIFFITH: That they were 19 withdrawn? 20 MS. TABACCHI: Yes, based on the 21 communications and the correspondence back and 22 forth with you, I believe, on these topics that</p>

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<p style="text-align: right;">Page 489</p> <p>1 those topics have been withdrawn.</p> <p>2 MS. ST. PETER-GRIFFITH: I have never</p> <p>3 said this topic was withdrawn. It's part of the</p> <p>4 Notice.</p> <p>5 MS. TABACCHI: Well, the Notice was sent</p> <p>6 after we had back and forth negotiations on the</p> <p>7 topics. So we asserted a number of objections to</p> <p>8 the Notice. I understand that you served it</p> <p>9 later. You served it later when you had a</p> <p>10 particular date, but our objections that we had</p> <p>11 asserted stand as to the Notice regardless of</p> <p>12 whatever date you sent it to us.</p> <p>13 MS. ST. PETER-GRIFFITH: Well, this</p> <p>14 Notice was sent to you, Tina, this week though,</p> <p>15 the Notice to reconvene.</p> <p>16 MS. TABACCHI: Right. Did you expect us</p> <p>17 to resend you our letter that had already asserted</p> <p>18 all of our objections?</p> <p>19 MS. ST. PETER-GRIFFITH: No.</p> <p>20 MS. TABACCHI: Okay.</p> <p>21 MS. ST. PETER-GRIFFITH: I expected you</p> <p>22 to move for protection if you had an objection to</p>	<p style="text-align: right;">Page 491</p> <p>1 back as requested.)</p> <p>2 MS. TABACCHI: I would object to that as</p> <p>3 beyond the scope.</p> <p>4 MS. ST. PETER-GRIFFITH: Sub 3, Topic</p> <p>5 12.</p> <p>6 MS. TABACCHI: It's my understanding</p> <p>7 that that was withdrawn. But we don't need to</p> <p>8 spend more time today debating that. I will</p> <p>9 object as beyond the scope.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Sir, if you can answer the question.</p> <p>12 A. It's not something that I'm prepared to</p> <p>13 talk about.</p> <p>14 Q. Are there any other communications that</p> <p>15 you're aware of with any state or federal Medicaid</p> <p>16 or Medicare official concerning Abbott's pricing</p> <p>17 its list prices or its AWP's?</p> <p>18 MS. TABACCHI: I assume you're</p> <p>19 incorporating his first day of testimony?</p> <p>20 MS. ST. PETER-GRIFFITH: Yes, I am. I'm</p> <p>21 just trying to round out this topic.</p> <p>22 MS. TABACCHI: Sure. I understand.</p>
<p style="text-align: right;">Page 490</p> <p>1 the topic. I mean if you're telling me he's not</p> <p>2 prepared to address -- are you telling me he's not</p> <p>3 prepared to address Topic 12?</p> <p>4 MS. TABACCHI: He has addressed Topic</p> <p>5 12. He's provided testimony on Topic 12 subject</p> <p>6 to our objections and subject to the negotiations</p> <p>7 between the parties on this topic.</p> <p>8 MS. ST. PETER-GRIFFITH: Well, I didn't</p> <p>9 withdraw items for No. 12. I can check on that.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Let me ask you this then: Sir, with</p> <p>12 regard to Topic 12 have we covered everything that</p> <p>13 you're prepared to testify about?</p> <p>14 MS. TABACCHI: How's the witness</p> <p>15 supposed to answer that? The question that you</p> <p>16 just asked he's not prepared to answer.</p> <p>17 MS. ST. PETER-GRIFFITH: Well, you're</p> <p>18 telling me, Tina, that he's not prepared to talk</p> <p>19 about a question that is squarely within Topic 12.</p> <p>20 MS. TABACCHI: Can you read back just</p> <p>21 the last question before we began this discussion.</p> <p>22 (WHEREUPON said record was read</p>	<p style="text-align: right;">Page 492</p> <p>1 THE WITNESS: There were a number of</p> <p>2 prices that were communicated to federal in terms</p> <p>3 of AMP and in terms of 340(b) prices, in terms of</p> <p>4 Federal Supply Schedule prices, and so on and so</p> <p>5 forth. But as far as list and AWP, no.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. For the period from 1991 through 2004,</p> <p>8 what were the revenues for the Hospital Products</p> <p>9 Division?</p> <p>10 MS. TABACCHI: We're switching topics</p> <p>11 now?</p> <p>12 MS. ST. PETER-GRIFFITH: Yes.</p> <p>13 MS. TABACCHI: I'm going to object to</p> <p>14 the form.</p> <p>15 THE WITNESS: I don't have those numbers</p> <p>16 at my fingertips here.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Can you give me any sense as to the</p> <p>19 overall financial performance of Abbott's Hospital</p> <p>20 Products Division from 1991 until the time of the</p> <p>21 Hospira spin?</p> <p>22 MS. TABACCHI: Object to the form. For</p>

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<p>1 this particular topic, we did state in our 2 objections that Mr. Sellers would not be prepared 3 to testify as to specifics. 4 We understand those financial 5 documents have been provided to you. If you want 6 to assist him with those, but he has not memorized 7 the financials. 8 MS. ST. PETER-GRIFFITH: I'm not asking 9 him to memorize the financials. I'm asking broad 10 brush. 11 THE WITNESS: Broad brush over that time 12 period, I think the Hospital Products Division 13 performed in concert with what the overall 14 corporation performed. 15 I believe starting from 1991 16 through 2000 I believe that our revenue went up 17 every year, and I think the percentages varied. 18 And I believe our margin or profitability went up 19 every year. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Were the operational goals for Alt. Site 22 and Home Infusion met each year from '91 through</p>	<p>1 put in the plan. So then it would be a matter of 2 a discussion of any differences of opinion. 3 We would then come out with a 4 consensus opinion as to what the Alternate Site 5 plan would be, and then that was presented to 6 division management, again at the business unit 7 level but then consolidated at the Alternate Site 8 level. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Where would the marketing plans be 11 maintained or stored? Would there be a particular 12 protocol for maintaining them as business records? 13 MS. TABACCHI: Object to the form, 14 beyond the scope. 15 THE WITNESS: Not really. There was no 16 retention. They were contemporary documents. 17 Once the plan was together or the update was 18 together, we had agreed with what we thought we 19 were going to do from a revenue standpoint and 20 from a profitability standpoint, in a lot of cases 21 by month for the remainder of the reporting 22 period, and so we would monitor to those numbers</p>
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<p>1 2003? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: Again, on a year-to-year 4 basis I can't say. 5 My general impression is that 6 product sales grew and grew in double digit 7 numbers annually through most of that period, and 8 the renal care division did well. As I've said, 9 the Home Infusion business we grew it, we kind of 10 hit a ceiling and then started to drop off. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. How were marketing plans, the plans and 13 then the updates, for Alternate Site formulated? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: Each of the business units 16 would define what their proposed plan was for the 17 coming year. That would be consolidated by the 18 Alternate Site controller. 19 We would then have meeting or 20 meetings with the vice president of Alternate 21 Site. It was Don Robertson at the time. He may 22 or may not be in agreement with everything that we</p>	<p>1 But the rest of the document we really didn't try 2 to maintain. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. In developing the marketing plans or 5 plan updates, what consideration, if any, did 6 Abbott include about Medicare or Medicaid 7 reimbursed shares of the market? 8 MS. TABACCHI: Object to the form, 9 beyond the scope. 10 THE WITNESS: It was not a number that I 11 remember us reporting. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Did Medicare or Medicaid reimbursement 14 factor into the marketing plans or plan updates? 15 MS. TABACCHI: Object to the form, 16 beyond the scope. 17 THE WITNESS: No. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Did reimbursement by any third-party 20 payor factor into the marketing plan or plan 21 updates? 22 MS. TABACCHI: Same objections.</p>

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<p>1 THE WITNESS: Not that I recall.</p> <p>2 MS. ST. PETER-GRIFFITH: If we could</p> <p>3 just take a minute, I might be ready to pass the</p> <p>4 witness to Jarrett.</p> <p>5 MS. TABACCHI: Sure. If you're going</p> <p>6 to pass, we'll take a break.</p> <p>7 MS. ST. PETER-GRIFFITH: Oh, I'm sorry,</p> <p>8 no. I still have one more topic.</p> <p>9 (WHEREUPON Exhibit Sellers 026</p> <p>10 was marked as of 3/31/2008.)</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Okay. Mr. Sellers, Contract Marketing</p> <p>13 Basic Operating Procedures manual. (Document</p> <p>14 tendered to the witness.)</p> <p>15 Before we start looking at specific</p> <p>16 sections, sir, I'd like to ask you when did</p> <p>17 Abbott's Contract Marketing, first of</p> <p>18 all -- strike that.</p> <p>19 What is this document? Let's start</p> <p>20 there?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: This document is an</p>	<p>1 scope.</p> <p>2 THE WITNESS: I don't have any direct</p> <p>3 knowledge with regard to when that happened.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Because it was maintained on the shared</p> <p>6 drive, could anyone who could access the HPD</p> <p>7 shared drive access the Contract Marketing Basic</p> <p>8 Operating Procedures manual?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 beyond the scope.</p> <p>11 THE WITNESS: They could have.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Was this particular manual published to</p> <p>14 everyone within Contract Marketing, HBS Contract</p> <p>15 Marketing?</p> <p>16 A. No.</p> <p>17 Q. Is it your understanding that it was</p> <p>18 only marketed to the individuals who fell under</p> <p>19 Bob Brian's leadership?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>
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<p>1 accumulation of miscellaneous facts and figures</p> <p>2 put together by one manager in Contract Marketing</p> <p>3 I assume for the benefit of his team. And it was</p> <p>4 contributed to by members of his team over several</p> <p>5 years I believe. It was kept on the what we</p> <p>6 called our shared drive in Contract Marketing.</p> <p>7 But it was primarily used by the HBS Contract</p> <p>8 Marketing team that was specific to that manager.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. And who was the manager?</p> <p>11 A. Bob Brian.</p> <p>12 Q. How long was Mr. Brian a manager?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I'm not sure. He left</p> <p>15 Abbott in 2000. I suspect he was a manager from</p> <p>16 sometime around the middle of the 1990s until the</p> <p>17 time he left.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. When was the first version of the</p> <p>20 Contract Marketing Basic Operating Procedure</p> <p>21 manual created?</p> <p>22 MS. TABACCHI: Objection, beyond the</p>	<p>1 Q. How is the accuracy of the information</p> <p>2 contained in the Contract Marketing Basic</p> <p>3 Operating Procedures manual verified?</p> <p>4 A. I don't believe it was other than Bob</p> <p>5 Brian may have read it.</p> <p>6 Q. How long was this -- or let me ask you,</p> <p>7 when was this procedure manual no longer utilized?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: A short period after Bob</p> <p>10 Brian left.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Why?</p> <p>13 A. Because as the new general manager of</p> <p>14 Contract Marketing, I came in and looked at it and</p> <p>15 said, one, it's misnamed, two, it wasn't vetted</p> <p>16 appropriately, and three, I felt that it wasn't</p> <p>17 applicable to Contract Marketing as a whole.</p> <p>18 Q. Prior to your coming on, do you know how</p> <p>19 it was utilized within Contract Marketing?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: As I remember and as I've</p> <p>22 been told, it was purely a reference document for</p>

<p style="text-align: right;">Page 501</p> <p>1 that team.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Was the team required to follow the</p> <p>4 guidance that was set forth in this manual?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: I don't believe so.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Why did you feel it was misnamed?</p> <p>9 A. Because it's called "Basic Operating</p> <p>10 Procedure," but it's got a myriad of sections in</p> <p>11 here which are not procedures. They're meant to</p> <p>12 be informational reference points. But, to me, a</p> <p>13 procedure tells you how you should operate, what</p> <p>14 your practice should be, something like that. And</p> <p>15 in many cases this doesn't do that.</p> <p>16 Q. Well, did this manual play a role at all</p> <p>17 in providing guidance as to what procedures at</p> <p>18 least Mr. Brian's staff should have been</p> <p>19 following?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Maybe in his mind, yes. I</p> <p>22 don't know.</p>	<p style="text-align: right;">Page 503</p> <p>1 being misnamed and not vetted that it wasn't</p> <p>2 applicable. What did you mean?</p> <p>3 A. I can't pick a specific. But having</p> <p>4 gone through this when I originally started, there</p> <p>5 were some dated documents in here. "Dated"</p> <p>6 meaning past, the practice had changed.</p> <p>7 Q. Okay.</p> <p>8 A. And there were things in here that his</p> <p>9 group may have been doing, but other groups</p> <p>10 weren't doing, mainly because it was a different</p> <p>11 product, you know, they were different product</p> <p>12 segments and we had different practices for</p> <p>13 different product segments.</p> <p>14 Q. Which product segment did Mr. Brian</p> <p>15 oversee?</p> <p>16 A. He had what we called our small volume</p> <p>17 injectables.</p> <p>18 Q. Did the small volume injectables include</p> <p>19 any of the products set forth in the Complaint as</p> <p>20 being the subject drugs?</p> <p>21 A. Some of them.</p> <p>22 Q. Which ones? Do you know?</p>
<p style="text-align: right;">Page 502</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Well, do you know whether he required</p> <p>3 his Contract Marketing personnel to follow the</p> <p>4 procedures that are set forth in this manual?</p> <p>5 MS. TABACCHI: Object to the form,</p> <p>6 beyond the scope.</p> <p>7 THE WITNESS: I don't have any knowledge</p> <p>8 to that. I do believe he asked anybody new coming</p> <p>9 into his organization to read it.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Would his staff have any reason to doubt</p> <p>12 the accuracy of the procedures or information</p> <p>13 contained in the manual?</p> <p>14 MS. TABACCHI: Object to the form,</p> <p>15 beyond the scope.</p> <p>16 THE WITNESS: Knowing Bob Brian, I would</p> <p>17 say they were probably told not to challenge it.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Not to challenge it. Why do you say</p> <p>20 that?</p> <p>21 A. Just the way he ran his unit.</p> <p>22 Q. You also said that in addition to it</p>	<p style="text-align: right;">Page 504</p> <p>1 A. Do you want me to go through them?</p> <p>2 Q. Yeah, if you could just identify.</p> <p>3 A. Do you want me to give the NDC number?</p> <p>4 Q. Or just the name of the product.</p> <p>5 A. Well, some of them are misleading.</p> <p>6 Sodium chloride for injection,</p> <p>7 there were a number of, this number is 4196, 4888,</p> <p>8 4887. Those were small volume. Sodium chloride</p> <p>9 for irrigation was not.</p> <p>10 Water for injection, I think I said</p> <p>11 4887, was. 3977 water for injection was.</p> <p>12 Vancomycin was. Dextrose five percent in 50 ml.</p> <p>13 100 ml was not. Nor were the Add-vantage bags</p> <p>14 7101, 7100.</p> <p>15 The majority on the second page are</p> <p>16 what I'd call large volume.</p> <p>17 Q. Okay.</p> <p>18 A. Acyclovir would have been, I don't know</p> <p>19 when we ceased marketing acyclovir, but I think it</p> <p>20 was around the middle of the 1990s.</p> <p>21 MS. ST. PETER-GRIFFITH: Okay. If we</p> <p>22 could take a break, is now a good time to take a</p>

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<p style="text-align: right;">Page 505</p> <p>1 break?</p> <p>2 MS. TABACCHI: Sure.</p> <p>3 MS. ST. PETER-GRIFFITH: I want to</p> <p>4 confer with Jarrett.</p> <p>5 THE VIDEOGRAPHER: We are off the record</p> <p>6 at 1:38 p.m.</p> <p>7 (WHEREUPON a recess was taken.)</p> <p>8 THE VIDEOGRAPHER: We are back on the</p> <p>9 record at 1:57 p.m. with the start of Tape No. 4.</p> <p>10 MS. ST. PETER-GRIFFITH: At this time</p> <p>11 the United States is going to pass the witness to</p> <p>12 relator's counsel.</p> <p>13</p> <p>14 EXAMINATION</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Good afternoon, Mr. Sellers. How are</p> <p>17 you?</p> <p>18 A. Fine.</p> <p>19 Q. Just picking up where we left off</p> <p>20 briefly on this Basic Operating Procedures manual,</p> <p>21 Exhibit 26. What did you do to learn about that</p> <p>22 document in preparing to testify?</p>	<p style="text-align: right;">Page 507</p> <p>1 beyond the scope.</p> <p>2 THE WITNESS: Probably three to five</p> <p>3 depending on the time.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. Is it your testimony that this document</p> <p>6 was only circulated to three or five people?</p> <p>7 MS. TABACCHI: Same objections.</p> <p>8 THE WITNESS: I don't believe it was</p> <p>9 circulated. It was used as a reference for that</p> <p>10 department segment within HBS Contract Marketing,</p> <p>11 and within that was Bob Brian and probably three</p> <p>12 to five people that reported to him.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. Do you understand that this document was</p> <p>15 known in the Contract Marketing department as the</p> <p>16 BOP?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. The B-O-P?</p> <p>20 A. I've heard it referred to as the BOP,</p> <p>21 yes.</p> <p>22 Q. By whom?</p>
<p style="text-align: right;">Page 506</p> <p>1 A. Specifically for the last deposition</p> <p>2 that we did, I believe I had said at that time I</p> <p>3 talked to Joe Brundza because Joe Brundza was the</p> <p>4 person who took over this area, the Bob Brian area</p> <p>5 of responsibility, once Bob Brian left.</p> <p>6 Q. Other than talking with Mr. Brundza, did</p> <p>7 you do any other work to prepare to testify about</p> <p>8 Exhibit 26?</p> <p>9 A. No, other than doing a quick scan of the</p> <p>10 document itself.</p> <p>11 Q. And you realize you've been designated</p> <p>12 as the corporate representative to testify on</p> <p>13 behalf of Abbott as to Exhibit 26; correct?</p> <p>14 MS. TABACCHI: Subject to Abbott's</p> <p>15 objections which limited his testimony to the use</p> <p>16 of this document by Contract Marketing Alternate</p> <p>17 Site.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. How many people reported to Bob Brian</p> <p>21 roughly?</p> <p>22 MS. TABACCHI: Object to the form,</p>	<p style="text-align: right;">Page 508</p> <p>1 A. I can't recall at this point in time.</p> <p>2 Q. When you testified a moment ago that it</p> <p>3 wasn't circulated, on what do you base that</p> <p>4 testimony?</p> <p>5 A. That's my recollection of the time.</p> <p>6 Q. What time?</p> <p>7 A. When I joined Contract Marketing in</p> <p>8 February of 2000.</p> <p>9 Q. Have you ever gained an understanding</p> <p>10 that the BOP, what's known as Exhibit 26 in this</p> <p>11 deposition, was a document kept in a three-ring</p> <p>12 binder that each Contract Marketing analyst had a</p> <p>13 copy of?</p> <p>14 MS. TABACCHI: Object to the form,</p> <p>15 beyond the scope.</p> <p>16 THE WITNESS: I've not seen any</p> <p>17 documentation to that effect.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. Have you read any of the sworn testimony</p> <p>20 in this case by Contract Marketing analysts about</p> <p>21 the BOP being a three-ring binder that they had</p> <p>22 kept a copy of?</p>

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<p style="text-align: right;">Page 509</p> <p>1 MS. TABACCHI: Object to the form, 2 beyond the scope. 3 THE WITNESS: I believe I've either read 4 or talked about a deposition of one person who 5 talked about it being somewhere in Contract 6 Marketing in a three-ring binder. 7 BY MR. ANDERSON: 8 Q. What person is that? 9 A. I think it was Mark Suheck. 10 Q. Did you read the testimony of any other 11 sales personnel or Contract Marketing analyst 12 about the use of a BOP binder? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: No. 15 BY MR. ANDERSON: 16 Q. Are you aware that other Abbott 17 employees have testified under oath other than 18 Mr. Suheck that they kept a copy of a three-ring 19 binder known as the BOP? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I'm not aware of any of 22 that.</p>	<p style="text-align: right;">Page 511</p> <p>1 the question. 2 BY MR. ANDERSON: 3 Q. Is it important to you in evaluating the 4 use of the Contract Marketing Basic Operating 5 Procedure manual to know whether or not it was 6 circulated beyond the three to five people in Bob 7 Brian's group? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: It's not important to me. 10 It's just I know, for instance, from Lynn Leone's 11 testimony that it was not used in Alternate Site. 12 I think in her testimony she said she reviewed it 13 to see if it would be applicable and decided it 14 was not. 15 But it's just my personal knowledge 16 that others outside of Bob Brian's group, while 17 they may have been aware of the BOP, hadn't read 18 it and did not feel any pressing need to read it. 19 So I just don't think it was an 20 active piece for anything other than those 21 individuals. 22 BY MR. ANDERSON:</p>
<p style="text-align: right;">Page 510</p> <p>1 BY MR. ANDERSON: 2 Q. Is there anything that makes the 3 testimony of Mr. Suheck more reasonably available 4 to Abbott as an organization than other testimony 5 provided in this case? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: No. 8 BY MR. ANDERSON: 9 Q. How did you go about choosing the 10 testimony of Mr. Suheck to review? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: I can't remember how it 13 came up in prep, but it somehow came up in prep. 14 BY MR. ANDERSON: 15 Q. Prep for -- 16 A. Whether I was scanning depositions or 17 discussing it with counsel. 18 Q. What significance, if any, do you place 19 upon the purported limited circulation of the BOP 20 that you've testified to here today? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: I'm not sure I understood</p>	<p style="text-align: right;">Page 512</p> <p>1 Q. You just mentioned the Alternate Site 2 Contract Marketing group. 3 For clarity of the record though, 4 this Contract Marketing BOP, or Basic Operating 5 Procedure manual, was created within the HBS, 6 Hospital Business Sector, Contract Marketing 7 department; correct? 8 A. Yes. 9 MS. TABACCHI: Object to the form. 10 BY MR. ANDERSON: 11 Q. So this was used within the same 12 department that published the list prices on 13 behalf of Abbott; correct? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: It was a document that was 16 in existence and purportedly used by that group, 17 and they would have been one of the contributing 18 members to defining list price, yes. 19 BY MR. ANDERSON: 20 Q. And from the very limited discussions 21 that you had with Mr. Brundza, you learned that it 22 was indeed used at least by Bob Brian's personnel;</p>

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<p>1 correct?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: No. That wasn't the</p> <p>4 conversation I had.</p> <p>5 Though I think Joe shared that his</p> <p>6 understanding was that it was solely used by that</p> <p>7 group, my discussion with him was more relevant to</p> <p>8 the fact of as the new manager did we cease using</p> <p>9 the document, and his understanding was yes, that</p> <p>10 we had ceased using the document, and in fact had</p> <p>11 moved it.</p> <p>12</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. And along those lines, one of the</p> <p>15 reasons why sometime after 2000 Abbott ceased</p> <p>16 using the BOP in the Contract Marketing group</p> <p>17 within the Hospital Business Sector was that some</p> <p>18 of the sections were outdated; is that correct?</p> <p>19 A. May have been. That wasn't the</p> <p>20 predominant reason. The predominant reason was</p> <p>21 that it wasn't an applicable document.</p> <p>22 Q. And you mentioned just a few moments ago</p>	<p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. Why was it part of the BOP?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: You'd have to ask Bob</p> <p>7 Brian that.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. Did you as a corporate rep take any</p> <p>10 steps to learn why information such as this</p> <p>11 reference book section was included in the BOP?</p> <p>12 MS. TABACCHI: Objection, beyond the</p> <p>13 scope.</p> <p>14 THE WITNESS: No. I took steps to move</p> <p>15 this document to where it wasn't in an operating</p> <p>16 section of the shared drive.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. Would you agree that personnel working</p> <p>19 in the Contract Marketing Hospital Business Sector</p> <p>20 group knew what the formula was for the</p> <p>21 calculation of Abbott AWP's?</p> <p>22 MS. TABACCHI: Object to the form.</p>
Page 514	Page 516
<p>1 today under oath that there were some sections</p> <p>2 that were not applicable; is that correct?</p> <p>3 A. That were not applicable beyond Bob</p> <p>4 Brian's area, yes.</p> <p>5 Q. Take a look, if you could, at the page</p> <p>6 in the BOP titled Reference Books. It's Page 247</p> <p>7 of 290.</p> <p>8 A. It's the number at the bottom of the</p> <p>9 page?</p> <p>10 Q. Yes, sir.</p> <p>11 A. Yes.</p> <p>12 Q. Is this page about the calculation of</p> <p>13 AWP?</p> <p>14 A. I think in fact this is a page that</p> <p>15 identifies various reference books that might be</p> <p>16 available within Contract Marketing.</p> <p>17 Q. And part of the description of Red Book</p> <p>18 is a formula for the calculation of AWP; correct?</p> <p>19 A. Yes. There's a formula in there.</p> <p>20 Q. Do you consider that information to be</p> <p>21 applicable to the Hospital Business Sector</p> <p>22 Contract Marketing department?</p>	<p>1 THE WITNESS: No. I don't think in</p> <p>2 general that they knew.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. Would you agree that someone knew enough</p> <p>5 to write a section of the BOP titled Reference</p> <p>6 Books shown on Page 247 of Exhibit 26?</p> <p>7 MS. TABACCHI: Objection, beyond the</p> <p>8 scope.</p> <p>9 THE WITNESS: I know at this revision I</p> <p>10 don't know whether it was Bob Brian or whether it</p> <p>11 was Kristen Berg, but someone put in something</p> <p>12 with regard to the calculation of AWP.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. So to the extent this information was</p> <p>15 contained in a binder available to personnel</p> <p>16 working in the HBS Contract Marketing department,</p> <p>17 there was no mystery as to how an AWP was</p> <p>18 calculated for Abbott drugs; was there?</p> <p>19 MS. TABACCHI: Object to the form,</p> <p>20 beyond the scope.</p> <p>21 THE WITNESS: I don't think we've ever</p> <p>22 said that there was a mystery with regard to AWP.</p>

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<p style="text-align: right;">Page 517</p> <p>1 I think what we've always said is that AWP wasn't 2 set by Abbott, and what formula they used may have 3 changed over time. 4 Over time there were a variety of 5 people that may or may not have thought they 6 understood how AWP was set. I don't think being 7 in the BOP is inconsistent with that. 8 BY MR. ANDERSON: 9 Q. So you'll agree that the inclusion of 10 the AWP calculation formula in the BOP was 11 consistent with Abbott Contract Marketing 12 personnel's knowledge about the calculation of 13 AWP? 14 MS. TABACCHI: Object to the form, 15 beyond the scope. 16 THE WITNESS: I will only agree that 17 whether it was Kristen Berg or Bob Brian, it was 18 consistent hopefully with what they thought. 19 BY MR. ANDERSON: 20 Q. But you're unwilling to agree that 21 others within Contract Marketing were aware of the 22 formula?</p>	<p style="text-align: right;">Page 519</p> <p>1 about the BOP? 2 A. You were asking about the AWP. 3 Q. No. I'm asking, sir, about the 4 circulation of this formula of AWP contained in 5 the BOP. What information did you learn from 6 Mr. Eichhorn's testimony about that? 7 MS. TABACCHI: Object to the form. It's 8 argumentative. 9 THE WITNESS: None. 10 BY MR. ANDERSON: 11 Q. What information have you learned other 12 than the -- 13 A. I must have misunderstood your first 14 question then. 15 Q. Okay. I'll rephrase it. 16 What information have you learned 17 about the AWP formula contained in the BOP other 18 than what you might have heard from an attorney or 19 from Mr. Sucheck? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I talked in general terms 22 about the whole BOP with Joe Brundza. And I</p>
<p style="text-align: right;">Page 518</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: No. It wasn't an 3 operative formula for them. 4 BY MR. ANDERSON: 5 Q. How do you know that, sir? Did you 6 undertake any effort as the corporate 7 representative to learn what the knowledge was 8 within the Contract Marketing? 9 A. I've read a number of depositions. 10 Q. Other than Mr. Sucheck's testimony, 11 which you stated might have been something you 12 learned in a discussion with an attorney, can you 13 name any other testimony that you've read about 14 the BOP? 15 A. Sure. 16 MS. TABACCHI: Object to form. 17 BY MR. ANDERSON: 18 Q. Ms. Leone? 19 A. Gerry Eichhorn. 20 Q. Gerry Eichhorn? 21 A. Mark Sebree. 22 Q. What did you learn from Mr. Eichhorn</p>	<p style="text-align: right;">Page 520</p> <p>1 believe in Lynn Leone's testimony she talks about 2 the BOP and it solely being used by Bob Brian's 3 group. 4 Other than those, I'm not aware of 5 any specific testimony that I can point you to. 6 BY MR. ANDERSON: 7 Q. You understand, don't you, sir, that 8 you're here today on behalf of the corporation 9 Abbott to testify about the reasons why vancomycin 10 catalog or list prices were increased in May of 11 '95 after they had been decreased in April of '95? 12 MS. TABACCHI: Subject to Abbott's 13 objections. 14 THE WITNESS: I understand that I am the 15 designated representative for Abbott Laboratories 16 with regard to questions of vancomycin price 17 changes in '95 and 2003. 18 BY MR. ANDERSON: 19 Q. This morning with respect to the 1995 20 vancomycin -- 21 A. Can I put this away? 22 Q. For the moment, yes, sir.</p>

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<p style="text-align: right;">Page 521</p> <p>1 This morning I believe you 2 testified that the only reason Abbott has for 3 reversing the April vanco price decreases and 4 increasing those prices to levels above the 5 initial price was a shelf stock adjustment 6 problem; is that correct? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: That's currently my 9 inference from reading both the Harry Adams 10 testimony and Gerry Eichhorn's testimony, as well 11 as what I remember from the time period. 12 BY MR. ANDERSON: 13 Q. Other than reading the testimony of 14 Mr. Eichhorn and Mr. Adams, what other steps, if 15 any, did you take to learn of the reasons why 16 Abbott reversed the initial April price decreases? 17 A. I didn't take any other steps because 18 they were the, both Sebree, Eichhorn, Brincks, 19 Jerrie Cicerale, Harry Adams, they were all asked 20 about this, they all responded to it. I tried to 21 make sure I was aware of what they said. 22 Q. In any of the testimony of Dave Brincks,</p>	<p style="text-align: right;">Page 523</p> <p>1 during that timeframe. 2 As part of that, as my knowledge of 3 that process, as we go through, as we went through 4 all of the price changes, there was a review of 5 what we intended the financial impact for that to 6 be, and it was in the normal plan. I'm looking at 7 that and saying that Harry would have had no other 8 leverage on Gerry Eichhorn to change that except 9 the fact that since he was responsible for the 10 relationship with wholesalers, that he did not 11 have a shelf stock adjustment budgeted for that 12 change, and therefore, overrode what Gerry 13 Eichhorn had done. 14 Q. Do you have any personal knowledge of 15 that, sir? 16 A. No. I'm saying I inferred that from 17 what I read in both Harry's and Gerry Eichhorn's 18 testimony. 19 Q. You'll agree with me, won't you, that 20 Mr. Adams didn't remember a darn thing about the 21 1995 decreases or increases on vanco? 22 A. He didn't have any general recollection,</p>
<p style="text-align: right;">Page 522</p> <p>1 Jerrie Cicerale, Harry Adams, Mark Sebree, or 2 Gerry Eichhorn are you testifying under oath, sir, 3 that any of them testified that a shelf stock 4 adjustment was the cause for the reversal of the 5 list price decrease? 6 A. None of them specifically talked about 7 that. 8 Q. So why are you testifying now under oath 9 today on behalf of the corporation that a shelf 10 stock adjustment was the reason for the reversal? 11 A. Gerry Eichhorn in his testimony talks 12 about making the decision to lower the price of 13 vancomycin. In his testimony he talks about 14 communicating that change. Later on he testifies 15 that that change was going in, it was handled by 16 Jerrie Cicerale or was in the process of being 17 handled by Jerrie Cicerale, and Harry Adams came 18 back to him and said that we only do changes in 19 prices once a year. And, in fact, we had just or 20 in the intervening time period we had published a 21 new catalog which would have had catalog price 22 increases per the standard practice that we had</p>	<p style="text-align: right;">Page 524</p> <p>1 no. 2 Q. He didn't have a specific recollection 3 either; did he? 4 A. Right. 5 Q. So you're reading the tea leaves on what 6 you think might have been the reason for the vanco 7 price increase in May of 1995; correct? 8 MS. TABACCHI: Object to the form, 9 mischaracterizes testimony. 10 THE WITNESS: No. I'm applying what was 11 standard practice to what I read as an interaction 12 between Gerry Eichhorn and Harry Adams. 13 BY MR. ANDERSON: 14 Q. Which you're testifying here today on 15 behalf of the corporation was something that 16 Mr. Adams had control over? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: Harry would have been the 19 intervening agent in terms of any shelf protection 20 that would have been given to wholesalers. 21 BY MR. ANDERSON: 22 Q. Other than reviewing the testimony that</p>

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<p style="text-align: right;">Page 525</p> <p>1 you have divined some meaning from by Mr. Adams 2 and Mr. Eichhorn, is there any other document or 3 other source of information that you're relying 4 upon in testifying here today as the Abbott 5 corporate representative about the reasons for the 6 May 1995 vanco price increase? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: Nothing other than the 9 fact that Gerry Eichhorn as a manager in Contract 10 Marketing had made a pricing decision, and it was 11 reversed by Harry Adams who was not direct in line 12 to do that. 13 (WHEREUPON Exhibit Sellers 027 14 was marked as of 3/31/2008.) 15 BY MR. ANDERSON: 16 Q. All right. Now, if you could, take a 17 look at what's been marked as Sellers Exhibit 27. 18 (Document tendered to the witness.) 19 MR. ANDERSON: The first page of Exhibit 20 27 is not on that courtesy copy I'm giving you, 21 Tina, so you may want to look at the first page of 22 it, but the rest of the document, which is what I</p>	<p style="text-align: right;">Page 527</p> <p>1 BY MR. ANDERSON: 2 Q. Have you seen the document before? 3 A. I've seen it before. 4 Q. You think you participated in a meeting 5 discussing this document? 6 A. I don't recall a meeting. 7 Q. Back in 2003 was Bob Lyman working with 8 you? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: Yes. 11 BY MR. ANDERSON: 12 Q. Now, if you could, sir -- hold on, 13 before I move on. Look at the bottom of the 14 document, which is the memo attached to Exhibit 15 27, and you see a file name there 16 "vancomycinCPA.doc"? 17 A. Yes. 18 (WHEREUPON Exhibit Sellers 028 19 was marked as of 3/31/2008.) 20 BY MR. ANDERSON: 21 Q. Now, if you could, contrast that with 22 what's been marked as Exhibit 28. (Document</p>
<p style="text-align: right;">Page 526</p> <p>1 really have questions about, is the same. 2 MS. ST. PETER-GRIFFITH: Hold on. 3 MR. ANDERSON: We might have it. We do. 4 Just in the nick of time. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Have you finished reviewing what's been 7 marked as Exhibit 27, sir? 8 A. Yes. 9 Q. Does this appear to be an e-mail 10 announcing a meeting along with an attached memo 11 titled "Issue: Vancomycin"? 12 A. It does appear to be a meeting 13 announcement for January 8, 2003. It doesn't say 14 who it's with. I would assume the Bob referenced 15 here is Bob Lyman. And it appears to be the 16 attachment is in marked up version. 17 Q. Do you believe you had any input 18 whatsoever into the creation of the memo titled 19 "Issue: Vancomycin"? 20 MS. TABACCHI: Objection, beyond the 21 scope. 22 THE WITNESS: I don't recall.</p>	<p style="text-align: right;">Page 528</p> <p>1 tendered to the witness.) 2 A. I haven't compared it word for word, but 3 it appears to be the same or similar document. 4 Q. They're similar. 5 Looking at Exhibit 28, do you see 6 that the file name on that one is different? 7 A. Yes. 8 Q. Do you see that the file path reads 9 "issues, issues briefs, project Miles, 10 vancomycin - updated October 23, 2000"? 11 A. Yes. 12 Q. Were you involved in any way whatsoever 13 with the creation of information that was provided 14 to Miles White about vancomycin? 15 MS. TABACCHI: Objection, beyond the 16 scope. 17 THE WITNESS: I don't recall. 18 BY MR. ANDERSON: 19 Q. Do you know if information about 20 vancomycin was provided to Miles White? 21 MS. TABACCHI: Same objection. 22 THE WITNESS: No. I'm not familiar with</p>

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<p style="text-align: right;">Page 529</p> <p>1 what may or may not have been provided to Miles 2 White. 3 BY MR. ANDERSON: 4 Q. Did you provide information to anybody 5 in Abbott's Public Affairs group about information 6 from Miles White concerning vancomycin? 7 MS. TABACCHI: Objection, beyond the 8 scope, object to the form. 9 THE WITNESS: There were a lot of 10 conversations going on in 2000. I don't know of 11 any specific information that I gave to anyone 12 that was targeted to Miles White. 13 BY MR. ANDERSON: 14 Q. Do you recall sharing any information 15 with anybody at the Abbott corporate offices about 16 vancomycin? 17 MS. TABACCHI: Object to the form, 18 beyond the scope. 19 THE WITNESS: Legal counsel. 20 BY MR. ANDERSON: 21 Q. Other than attorneys. 22 A. No.</p>	<p style="text-align: right;">Page 531</p> <p>1 yes. 2 BY MR. ANDERSON: 3 Q. Does this refresh your memory that you 4 did share information with the corporate offices 5 at Abbott about vanco? 6 MS. TABACCHI: Objection, beyond the 7 scope. 8 THE WITNESS: Apparently I did to 9 corporate affairs, yes. 10 BY MR. ANDERSON: 11 Q. And they're in the corporate offices 12 along with the CEO; correct? 13 MS. TABACCHI: Objection, beyond the 14 scope. 15 THE WITNESS: They're a corporate 16 function, correct. 17 BY MR. ANDERSON: 18 Q. And one of their primary jobs is to 19 brief the CEO about different things going on in 20 the corporation; correct? 21 MS. TABACCHI: Object to the form, 22 beyond the scope.</p>
<p style="text-align: right;">Page 530</p> <p>1 (WHEREUPON Exhibit Sellers 029 2 was marked as of 3/31/2008.) 3 BY MR. ANDERSON: 4 Q. Let's take a look, if we could, at 5 Sellers Exhibit 29. (Document tendered to the 6 witness.) 7 Keep all three of those together, 8 sir. I'm going to have questions about them in 9 conjunction with one another. 10 A. Okay. 11 Q. Exhibit 29 appears to be an e-mail 12 printed off of your computer that you sent to Ann 13 Fahey Windham with copies to Teretta Lewis and Bob 14 Lyman back in October of 2000; correct? 15 A. Correct. 16 Q. And the subject is vancomycin; correct? 17 A. Correct. 18 Q. And you'll agree that Ann Fahey Windham 19 was in the corporate affairs office; right? 20 MS. TABACCHI: Objection, beyond the 21 scope. 22 THE WITNESS: Corporate Public Affairs,</p>	<p style="text-align: right;">Page 532</p> <p>1 THE WITNESS: I don't believe so. 2 BY MR. ANDERSON: 3 Q. Well, we'll leave that to Ms. Babington 4 and her testimony. 5 Sir, if you could, take a look at 6 the vanco reimbursement dollars -- 7 A. Yes. 8 Q. -- and compare those to the dollars that 9 are shown in Exhibits 27 and 28. 10 A. They seem to be in the same ballpark. 11 Q. They're identical; aren't they? 12 A. I can compare them if you want me. 13 Q. They're dollar for dollar the same, but 14 I want you to check. 15 A. You want me to verify that? 16 Q. Please. 17 MS. TABACCHI: Object to the question as 18 beyond the scope. 19 MR. ANDERSON: This falls squarely 20 within the vanco prices change. 21 MS. TABACCHI: I disagree. 22 MR. ANDERSON: All right. Well, you're</p>

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<p style="text-align: right;">Page 533</p> <p>1 entitled to that.</p> <p>2 THE WITNESS: Yes. They appear to be</p> <p>3 identical in all three documents.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. Yes, sir.</p> <p>6 Why were you researching the amount</p> <p>7 of dollars Medicare had reimbursed for vancomycin?</p> <p>8 A. Because I was asked to.</p> <p>9 Q. But did you have any understanding of</p> <p>10 the underlying rationale for the project?</p> <p>11 MS. TABACCHI: Objection, beyond the</p> <p>12 scope, object to the form. I'm also going to</p> <p>13 caution the witness not to reveal any</p> <p>14 communications with counsel.</p> <p>15 THE WITNESS: No. In October I did not.</p> <p>16 There had been an article in the Chicago Tribune</p> <p>17 following the Department of Justice AWP's. So I</p> <p>18 don't know whether more questions were going to be</p> <p>19 coming from that or not. But in my mind I was</p> <p>20 reacting to the fact that they said that the</p> <p>21 Chicago Tribune was doing a story and they needed</p> <p>22 that information.</p>	<p style="text-align: right;">Page 535</p> <p>1 in June of 1996, and I think the numbers are</p> <p>2 consistent with that.</p> <p>3</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. Right.</p> <p>6 For instance, in '96 there was over</p> <p>7 \$8 million spent in Medicare money to reimburse</p> <p>8 for vancomycin; correct?</p> <p>9 MS. TABACCHI: Objection.</p> <p>10 THE WITNESS: For vancomycin therapy,</p> <p>11 yes.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. And then in '97, '98, and '99 there's</p> <p>14 still some significant dollars spent in</p> <p>15 reimbursement for vanco by Medicare; correct?</p> <p>16 MS. TABACCHI: Object to the form,</p> <p>17 beyond the scope.</p> <p>18 THE WITNESS: Significantly less.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. Significantly less, but nonetheless for</p> <p>21 instance '97 approaches \$900,000; correct?</p> <p>22 MS. TABACCHI: Same objections.</p>
<p style="text-align: right;">Page 534</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. As the Abbott corporate representative</p> <p>3 concerning changes in vanco prices, can you</p> <p>4 explain why Abbott would care about the total</p> <p>5 dollars spent by Medicare in reimbursing for</p> <p>6 vancomycin?</p> <p>7 MS. TABACCHI: Object to the form,</p> <p>8 beyond the scope of the Notice.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. You mentioned this morning that you</p> <p>12 thought vancomycin was no longer covered by</p> <p>13 Medicare after 1995. Is that your testimony this</p> <p>14 morning?</p> <p>15 A. It was '95, '96, something like that.</p> <p>16 Q. In looking at Exhibit 29, is your memory</p> <p>17 refreshed that in '96 vanco was covered by</p> <p>18 Medicare?</p> <p>19 MS. TABACCHI: Objection, beyond the</p> <p>20 scope.</p> <p>21 THE WITNESS: Actually, it's one of</p> <p>22 these documents that say that the coverage ceased</p>	<p style="text-align: right;">Page 536</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. So it's not as if the Medicare</p> <p>4 reimbursement ceased altogether?</p> <p>5 MS. TABACCHI: Same objections.</p> <p>6 THE WITNESS: No. Again, I think this</p> <p>7 draft background talks about the fact that</p> <p>8 physicians could specifically enter in a request</p> <p>9 to Medicare, and they were periodically granted,</p> <p>10 which I would assume that's what that is.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. And you're referencing Exhibit 27 for</p> <p>13 that rationale; correct?</p> <p>14 A. 27, and 28, yes.</p> <p>15 Q. Now, looking back at Exhibit 27, other</p> <p>16 than providing the vancomycin utilization dollars,</p> <p>17 did you have any role in pulling together</p> <p>18 information that you find and made a part of</p> <p>19 Exhibit 27?</p> <p>20 A. Again, I don't recall. I didn't recall</p> <p>21 until you showed me this that I even contributed</p> <p>22 to the numbers.</p>

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<p>1 Q. Do you agree that Exhibits 27 and 28 and 2 29 all pertain to the pricing of vancomycin over 3 the years, including the price changes in 1995? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: I would characterize this 6 to be, I think the way Bob had it, as a background 7 with some history or our interpretation of history 8 with regard to vancomycin. 9 10 BY MR. ANDERSON: 11 Q. Why didn't you review these documents in 12 preparing to testify as the Abbott corporate 13 representative concerning price changes on vanco? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: I don't think this 16 document would have changed what I've testified 17 to. 18 BY MR. ANDERSON: 19 Q. Why not? 20 A. There's nothing in here that is 21 fundamentally different from what I've said. 22 Q. Do you see one mention of a shelf stock</p>	<p>1 record, quote "Subsequently, we received 2 complaints from state insurance carriers that the 3 AWP for vanco was too high for Medicaid 4 state-issued reimbursements. So in May 1995 we 5 lowered vancomycin's catalog price for a month." 6 Did I read that correctly? 7 A. Yes. 8 Q. Is that consistent with Abbott's 9 corporate view of why the vancomycin prices were 10 lowered in or about April of 1995? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: It's not consistent with 13 my recollection. 14 BY MR. ANDERSON: 15 Q. What's your recollection? Are you 16 talking about your personal recollection, sir, or 17 are you talking about Abbott's corporate 18 recollection? 19 MS. TABACCHI: Object to the form. This 20 question has been asked and answered. 21 THE WITNESS: I can only speak to what 22 I'm knowledgeable of, and I was close to this but</p>
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<p>1 adjustment in Exhibits 27, 28, or 29? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: No. The only thing I see 4 here is an unexplained increase in vancomycin 5 price in '95. 6 BY MR. ANDERSON: 7 Q. Why do you say it's unexplained? 8 A. Because it's one sentence. 9 Q. Pardon? 10 A. It's one sentence. 11 Q. What's one sentence? 12 A. It's one sentence, "In June 1995 we 13 reinstated the price to its original catalog 14 price." That's it. 15 Q. You're referencing the very last 16 sentence of Exhibit 27 or 28? 17 A. Yes. 18 Q. Look at that paragraph that immediately 19 precedes the closing paragraph. Do you see a 20 paragraph that starts with the word 21 "Subsequently"? 22 I'll read for the benefit of the</p>	<p>1 not intimate with it, but my recollection was it 2 had to do with list price, it did not have to do 3 or I wasn't aware of any specific payor, whether 4 it was Medicaid or not, my recollection is it was 5 not Medicaid. So I would have had some 6 disagreements with that statement had I reviewed 7 this document. 8 BY MR. ANDERSON: 9 Q. I understand that's your personal 10 disagreement. 11 As the corporate representative of 12 Abbott today, are you testifying that the 13 statement that I've just read contained in the 14 second to last paragraph of Exhibit 28 is 15 incorrect? 16 A. I believe it's inconsistent with what I 17 remember happening. 18 Q. And, therefore, inconsistent with 19 Abbott's position? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: Yes. 22 BY MR. ANDERSON:</p>

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<p style="text-align: right;">Page 541</p> <p>1 Q. Okay. Reading the next paragraph from 2 Exhibit 28, quote "Our carriers responded by 3 saying that this reduction interfered with their 4 ability to provide care. During this brief 5 period, physicians stated that they were unable to 6 recoup provider costs associated with vancomycin 7 such as nursing labor to administer the drug and 8 pharmacy overhead and labor to mix and label the 9 product. In June 1995 we reinstated the price to 10 its original catalog price." 11 Did I read that correctly? 12 A. Yes. 13 MS. TABACCHI: No. 14 THE WITNESS: Well, no, you didn't. You 15 said "carriers" instead of "customers." 16 MR. ANDERSON: All right. Well, I need 17 to clear that up then. Let me take it from the 18 top. 19 THE WITNESS: Okay. 20 BY MR. ANDERSON: 21 Q. I'm going to read the last paragraph of 22 Exhibit 28. Quote "Our customers responded by</p>	<p style="text-align: right;">Page 543</p> <p>1 BY MR. ANDERSON: 2 Q. Did you take steps to review any 3 documents concerning the vancomycin 1995 price 4 changes? 5 A. I've been through a number of these 6 depositions and the same documents have come up in 7 a number of them. I'm reasonably familiar with 8 the documents, so I didn't feel I needed to review 9 them again. 10 Q. Well, you just testified that you're not 11 aware of any documents concerning customer 12 complaints regarding decreased AWP's or list prices 13 on vanco in 1995; is that correct? 14 A. That's correct. 15 Q. Do you believe that any such documents 16 exist that you've simply not reviewed, or is it 17 your testimony they don't exist? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I have no reason to 20 believe they exist. 21 (WHEREUPON Exhibit Sellers 030 22 was marked as of 3/31/2008.)</p>
<p style="text-align: right;">Page 542</p> <p>1 saying that this reduction interfered with their 2 ability to provide care. During this brief 3 period, physicians stated that they were unable to 4 recoup provider costs associated with vancomycin, 5 such as nursing labor to administer the drug and 6 pharmacy overhead and labor to mix and label the 7 product. In June 1995 we reinstated the price to 8 its original catalog price." 9 Did I read that correctly? 10 A. Yes. 11 Q. As the corporate representative of 12 Abbott concerning changes in vancomycin prices in 13 1995, is it true that customers complained to 14 Abbott about lower reimbursement sometime around 15 April of 1995? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I don't know of any 18 timing. I'm only aware of a couple of documents 19 that reference, no, in fact, I'm not aware of any 20 documents that reference this price change. I'm 21 aware of a couple of documents that reference the 22 price change we made in 2001, not in 1995.</p>	<p style="text-align: right;">Page 544</p> <p>1 BY MR. ANDERSON: 2 Q. If you could take a look at Exhibit 30. 3 (Document tendered to the witness.) 4 A. Yes. 5 Q. Do you agree this is a memo dated 6 April 26, 1995, concerning vanco price change? 7 A. Yes. 8 Q. Did you review this document, sir, in 9 preparing to testify as the Abbott corporate 10 representative concerning the 1995 vanco price 11 changes? 12 A. I've seen this document before. 13 Q. Why did you not mention this document 14 just a moment ago? 15 A. Because I don't think it states what 16 you're asking. 17 Q. Is it your testimony, sir, that this 18 document doesn't pertain to the vanco price 19 changes? 20 A. It does. 21 Q. Why did you not consider this document 22 in preparing to testify as Abbott's corporate</p>

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<p style="text-align: right;">Page 545</p> <p>1 representative?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: This document doesn't</p> <p>4 state an objection by providers.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. All right. Let's read the document and</p> <p>7 see where I'm missing something. Quote "In the</p> <p>8 last several days, we have received calls</p> <p>9 regarding the price change on vancomycin</p> <p>10 products." And then there's some prices listed</p> <p>11 where previously they were about triple what they</p> <p>12 are now, double in some cases. "These price</p> <p>13 changes will affect reimbursement, and so</p> <p>14 customers may question us. This change will</p> <p>15 affect three types of payors or insurers, and I</p> <p>16 will outline the effect. The reimbursement effect</p> <p>17 is probably why customers will bring this issue</p> <p>18 up."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Does that indicate to you, sir, that</p> <p>22 customers were complaining or were expected to</p>	<p style="text-align: right;">Page 547</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. Are you aware of general complaints?</p> <p>3 A. No.</p> <p>4 Q. Do you have any corporate knowledge</p> <p>5 about general complaints from customers about</p> <p>6 decreased reimbursement on vanco in or about April</p> <p>7 of '95?</p> <p>8 A. No.</p> <p>9 Q. Have you taken any steps to learn</p> <p>10 whether or not such complaints ever existed?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I've read the testimony of</p> <p>13 the relevant people, including Mike Heggie.</p> <p>14</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. And you don't believe that Mike Heggie</p> <p>17 testified there were complaints?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I don't recall a piece of</p> <p>20 his testimony that talked to that.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Do you recall your own testimony, sir,</p>
<p style="text-align: right;">Page 546</p> <p>1 complain about decreased reimbursement on</p> <p>2 vancomycin in or about April of 1995?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: It doesn't tell me that</p> <p>5 the customers were complaining. It says that</p> <p>6 there may have been a few calls asking about the</p> <p>7 price change. It didn't say that they had an</p> <p>8 opinion one way or another.</p> <p>9 I think what Mike Heggie was</p> <p>10 attempting to do here was frame it for our sales</p> <p>11 representatives. He said they may question us.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Is it Abbott's position today through</p> <p>14 you, its corporate representative, that customers</p> <p>15 did not complain at all about decreased</p> <p>16 reimbursement as a result of decreased AWP's on</p> <p>17 vancomycin in or about April of 1995?</p> <p>18 MS. TABACCHI: Object to the form,</p> <p>19 beyond the scope.</p> <p>20 THE WITNESS: I can tell you that as the</p> <p>21 corporate representative, I'm not aware of</p> <p>22 specific complaints with regard to this.</p>	<p style="text-align: right;">Page 548</p> <p>1 under oath as the corporate representative for</p> <p>2 Abbott in the Texas case that you do recall</p> <p>3 complaints?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 mischaracterizes the witness' testimony. If</p> <p>6 you're going to ask him about his testimony,</p> <p>7 please put the transcript in front of him.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. Do you recall that?</p> <p>10 A. I'd like to see it.</p> <p>11 Q. But do you recall it?</p> <p>12 A. No.</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 (WHEREUPON Exhibit Sellers 031</p> <p>15 was marked as of 3/31/2008.)</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q. All right. If you could, take a look at</p> <p>18 what's been marked as Exhibit 31. (Document</p> <p>19 tendered to the witness.)</p> <p>20 Do you believe you testified that</p> <p>21 you recall complaints from customers about</p> <p>22 decreased reimbursement under oath previously?</p>

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<p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I don't believe so.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. So any testimony today about failing to</p> <p>5 remember any customer complaints would necessarily</p> <p>6 be inconsistent with any testimony previously</p> <p>7 where you did testify you remembered complaints;</p> <p>8 correct?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 argumentative. Please put the transcript in front</p> <p>11 of the witness if you're going to challenge him on</p> <p>12 this.</p> <p>13 MR. ANDERSON: Pull out the transcript.</p> <p>14 It's Page 505. Pull it out, let's read it. Page</p> <p>15 505.</p> <p>16 MS. TABACCHI: Go ahead. Do you have an</p> <p>17 exhibit?</p> <p>18 MR. ANDERSON: Yeah. I've got it on my</p> <p>19 computer right here. I'll even show you my</p> <p>20 password.</p> <p>21 THE WITNESS: Please don't.</p> <p>22 MR. ANDERSON: Start, sir, at Page 505,</p>	<p>1 THE WITNESS: 4 through 12?</p> <p>2 MR. ANDERSON: Page 505, Line 4 through</p> <p>3 Line 12. Is that the end of your answer?</p> <p>4 MS. TABACCHI: I'll object to this line</p> <p>5 of questioning as beyond the scope to the extent</p> <p>6 you're asking Mr. Sellers about his individual</p> <p>7 testimony in prior depositions.</p> <p>8 THE WITNESS: Okay. I'm at a loss to</p> <p>9 see the relevance to the point you just made.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. Do you believe, sir, that you previously</p> <p>12 testified -- strike that.</p> <p>13 If you could for the benefit of the</p> <p>14 record and the jury that may watch this tape,</p> <p>15 please read the question and answer at Page 505,</p> <p>16 Line 4 through Line 12.</p> <p>17 A. "By Mr. Anderson: And to sum it all up,</p> <p>18 the ultimate decision on the vancomycin price</p> <p>19 changes in 1995 was to keep the list prices higher</p> <p>20 rather than lower to appease customer complaints</p> <p>21 about reimbursement; correct?" And my answer was</p> <p>22 "A decision was made to reinstate the prices that</p>
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<p>1 Line 4, and read through Line 12 on Page 505.</p> <p>2 MS. TABACCHI: For the record, you've</p> <p>3 questioned this witness in the Department of</p> <p>4 Justice deposition on this particular paragraph,</p> <p>5 and he's already explained this to you.</p> <p>6 MR. ANDERSON: It wasn't corporate</p> <p>7 testimony.</p> <p>8 MS. TABACCHI: Fine.</p> <p>9 MR. ANDERSON: I've got to redo it all.</p> <p>10 I mean if we're going to have inconsistent</p> <p>11 testimony, we've got to redo it.</p> <p>12 MS. TABACCHI: It's not inconsistent.</p> <p>13 Look at his other testimony. You've already asked</p> <p>14 him about this. Go ahead.</p> <p>15 THE WITNESS: What am I supposed to be</p> <p>16 reading?</p> <p>17 MR. ANDERSON: Page 505, Line 4 through</p> <p>18 12, please.</p> <p>19 MS. TABACCHI: Do you have his November</p> <p>20 deposition as well, Jarrett?</p> <p>21 MR. ANDERSON: I have all of them on my</p> <p>22 computer. Do you want to read them all?</p>	<p>1 were before the reduction."</p> <p>2 I said yes, meaning that we did</p> <p>3 take the prices back up. I did not say yes, that</p> <p>4 we appeased customer complaints.</p> <p>5 Q. Sir, did you say "No"?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: You asked me to interpret</p> <p>8 it. I interpreted it.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. No. I asked you to read it first. You</p> <p>11 chose to interpret it. But did you say "No"?</p> <p>12 MS. TABACCHI: Jarrett, Mr. Sellers has</p> <p>13 already been through this with you in November.</p> <p>14 You did this already in November in his prior</p> <p>15 testimony.</p> <p>16 MR. ANDERSON: As a fact witness. Now</p> <p>17 we're talking as a corporate rep in his ability to</p> <p>18 prepare and present testimony of all reasonably</p> <p>19 available information, Tina, including his own</p> <p>20 testimony.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Sir, did you say "No" in response to my</p>

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<p style="text-align: right;">Page 553</p> <p>1 question at Page 505 of your prior deposition?</p> <p>2 MS. TABACCHI: Object to the form of the</p> <p>3 question, harassing.</p> <p>4 THE WITNESS: No. I gave you a</p> <p>5 qualified "Yes."</p> <p>6 BY MR. ANDERSON:</p> <p>7 Q. Sir, do you agree that you were under</p> <p>8 oath when you provided that testimony?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Was that testimony truthful?</p> <p>13 A. Yes.</p> <p>14 Q. But you didn't consider that testimony</p> <p>15 with respect to providing your opinions or</p> <p>16 statements today on behalf of the corporation; did</p> <p>17 you?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: No. I don't consider it</p> <p>20 inconsistent.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Now, if you could, take a look at what's</p>	<p style="text-align: right;">Page 555</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. Do you agree that Ms. Cicerales states</p> <p>3 quote "Just to let you know, these are some of the</p> <p>4 items Gerry Eichhorn tried to adjust a few years</p> <p>5 ago and it caused all kinds of issues with</p> <p>6 Medicaid reimbursements, i.e., Red Book, First</p> <p>7 Databank, Medi-Span."</p> <p>8 Did I read that correctly?</p> <p>9 A. You read it correctly.</p> <p>10 Q. Does that statement by Ms. Cicerales seem</p> <p>11 consistent with your corporate testimony here</p> <p>12 today?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: No, but it's Jerrie</p> <p>15 Cicerales's recollection.</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q. Yeah. And did you read her sworn</p> <p>18 testimony under oath in this case?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I read some of it.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Did you read how she testified that she</p>
<p style="text-align: right;">Page 554</p> <p>1 been marked as Exhibit 31.</p> <p>2 A. Okay.</p> <p>3 Q. Did you review this document in</p> <p>4 preparing to testify today as the Abbott corporate</p> <p>5 representative concerning the vancomycin price</p> <p>6 changes in 1995?</p> <p>7 A. No. I've seen this document before.</p> <p>8 Q. But you didn't consider it in providing</p> <p>9 your corporate testimony today; did you?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Why not?</p> <p>14 A. I don't think it necessarily reveals</p> <p>15 anything that's different from what I've talked</p> <p>16 about.</p> <p>17 Q. Have you talked at all, sir, about how</p> <p>18 Medicaid reimbursement impacted the vanco price</p> <p>19 changes in '95?</p> <p>20 MS. TABACCHI: Object to the form,</p> <p>21 argumentative.</p> <p>22 THE WITNESS: No.</p>	<p style="text-align: right;">Page 556</p> <p>1 recalled there were complaints about</p> <p>2 reimbursement?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: I don't recall that.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Do you agree Mr. Adams apparently got</p> <p>7 this e-mail from Jerrie Cicerales?</p> <p>8 MS. TABACCHI: Object to the form,</p> <p>9 beyond the scope of the Notice.</p> <p>10 THE WITNESS: It was originally sent to</p> <p>11 Harry Adams.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Did you ask Mr. Adams if he recalls any</p> <p>14 complaints about Medicaid reimbursement with</p> <p>15 respect to the 1995 price changes?</p> <p>16 A. I didn't talk to Harry about any of</p> <p>17 this. I've read his testimony.</p> <p>18 Q. Do you have Mr. Adams' phone number?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: Do I have his phone</p> <p>21 number?</p> <p>22 BY MR. ANDERSON:</p>

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<p>1 Q. Yes, sir.</p> <p>2 A. I don't know.</p> <p>3 Q. When you were at Hospira about a year</p> <p>4 ago, Mr. Adams was a coworker of yours; right?</p> <p>5 A. Yes.</p> <p>6 Q. Do you think it would be difficult for</p> <p>7 you to call Mr. Adams?</p> <p>8 MS. TABACCHI: Object to the form. This</p> <p>9 is harassing.</p> <p>10 THE WITNESS: No.</p> <p>11 MS. TABACCHI: The witness read his</p> <p>12 testimony. He told you that.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. But just for the clarity of the record,</p> <p>15 you haven't made any effort to learn from</p> <p>16 Mr. Adams his memory of the 1995 vanco price</p> <p>17 changes; have you?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. And for that matter, you haven't</p> <p>22 contacted any witnesses to try to gather</p>	<p>1 from the media, Congress, and the Justice</p> <p>2 Department for alleged price spread marketing with</p> <p>3 vancomycin taking advantage of the spread between</p> <p>4 the catalog price and the average wholesale price</p> <p>5 (AWP)."</p> <p>6 Did I have read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall Abbott coming under any</p> <p>9 fire about the pricing of its drugs?</p> <p>10 MS. TABACCHI: Object to the form,</p> <p>11 beyond the scope.</p> <p>12 THE WITNESS: Again, I think this</p> <p>13 document originated in 2000 as per this</p> <p>14 presentation over here which is Exhibit 28.</p> <p>15 The thing I do recall that happened</p> <p>16 was DOJ AWP's were published in May of 2000. I</p> <p>17 believe in June or July there was a Chicago</p> <p>18 Tribune article relative to that. What it said I</p> <p>19 can't remember, but I do remember one being</p> <p>20 published. So I don't know whether that's what</p> <p>21 they're referring to, whether they're referring to</p> <p>22 subpoenas or what. I don't know.</p>
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<p>1 information reasonably available to Abbott</p> <p>2 concerning the vanco 1995 price changes; have you?</p> <p>3 MS. TABACCHI: Object to the form,</p> <p>4 mischaracterizes the witness' testimony. He's</p> <p>5 reviewed many depositions.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Now, if you could, go back to 27, sir.</p> <p>9 A. Okay.</p> <p>10 Q. Is it possible that you participated in</p> <p>11 meetings concerning looking back at the history of</p> <p>12 the pricing on vancomycin?</p> <p>13 MS. TABACCHI: Objection, beyond the</p> <p>14 scope.</p> <p>15 THE WITNESS: I was in Contract</p> <p>16 Marketing, I was working with Bob, it's possible.</p> <p>17 I don't recall.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. Looking at the very first sentence in</p> <p>20 the second page of Exhibit 27, which is the first</p> <p>21 page of the memo titled "Issue: Vancomycin," it</p> <p>22 reads quote "Abbott has come under recent fire</p>	<p>1 BY MR. ANDERSON:</p> <p>2 Q. Do you believe that the media</p> <p>3 publication such as the Chicago Tribune article</p> <p>4 that you mentioned from the year 2000 constituted</p> <p>5 some type of criticism or fire regarding Abbott's</p> <p>6 pricing practices?</p> <p>7 MS. TABACCHI: Objection, beyond the</p> <p>8 scope.</p> <p>9 THE WITNESS: I think it was a</p> <p>10 relatively one-sided presentation as I recall.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Whether it was one-sided or not, do you</p> <p>13 believe it was critical?</p> <p>14 MS. TABACCHI: Object to the form,</p> <p>15 beyond the scope.</p> <p>16 THE WITNESS: I believe it was intended</p> <p>17 to be critical of the whole pharmaceutical</p> <p>18 industry.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. Including Abbott?</p> <p>21 A. Or pharmaceutical manufacturers, let me</p> <p>22 put it that way.</p>

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<p style="text-align: right;">Page 561</p> <p>1 MS. TABACCHI: Same objections. 2 BY MR. ANDERSON: 3 Q. Including Abbott; correct? 4 A. Abbott being an Illinois corporation, it 5 was always fair game for the Chicago Tribune. 6 Q. And the Tribune article specifically 7 named Abbott and discussed Abbott at length; 8 correct? 9 MS. TABACCHI: Objection, beyond the 10 scope. 11 THE WITNESS: I believe it talked about 12 vancomycin in particular. 13 BY MR. ANDERSON: 14 Q. Why did it take a Chicago Tribune 15 article for Abbott to create a memo like this 16 describing the vancomycin price history? 17 MS. TABACCHI: Object to the form, 18 beyond the scope, mischaracterizes the testimony. 19 THE WITNESS: I don't know. It would be 20 a good question for Kathy Babington. 21 BY MR. ANDERSON: 22 Q. Did the '97 CID from the Department of</p>	<p style="text-align: right;">Page 563</p> <p>1 Justice? 2 MS. TABACCHI: Object to the form, 3 beyond the scope of the Notice. 4 THE WITNESS: I can't recall any 5 specifics. There were a number of conversations 6 that we had with legal counsel. 7 BY MR. ANDERSON: 8 Q. Why were media reports more important 9 than the Department of Justice? 10 MS. TABACCHI: Object to the form, 11 mischaracterizes the testimony, beyond the scope 12 of the Notice. 13 THE WITNESS: I don't think that 14 necessarily prioritizes one over the other. 15 BY MR. ANDERSON: 16 Q. Did Abbott view the media reports to be 17 more troubling than CIDs received from the federal 18 government? 19 MS. TABACCHI: Object to the form, 20 beyond the scope of the Notice. 21 THE WITNESS: Again, all I can refer to 22 is this document. I think it puts even weight to</p>
<p style="text-align: right;">Page 562</p> <p>1 Justice cause Abbott to analyze its vanco price 2 history? 3 MS. TABACCHI: Objection to form, beyond 4 the scope. 5 MS. ST. PETER-GRIFFITH: '96. 6 MR. ANDERSON: Okay, '96. 7 MS. TABACCHI: Same objections. 8 BY MR. ANDERSON: 9 Q. I'll rephrase to clear up the record. 10 Did the 1996 CID from the 11 Department of Justice cause Abbott to analyze its 12 vanco pricing in any way? 13 MS. TABACCHI: Object to the form, 14 beyond the scope of the Notice. 15 THE WITNESS: I can't speak to what our 16 legal counsel was doing subsequent to the '96 CID. 17 BY MR. ANDERSON: 18 Q. To your knowledge, did any Abbott 19 personnel, whether legal or operational as you've 20 characterized them, conduct any review of Abbott's 21 pricing practices after receipt of the 1996 Civil 22 Investigative Demand from the Department of</p>	<p style="text-align: right;">Page 564</p> <p>1 media, Congress, and the Department of Justice. 2 BY MR. ANDERSON: 3 Q. It took the trifecta to analyze the 4 prices? It took a media report, it took Congress 5 through Pete Stark's letter, and it took the 6 Department of Justice sending subpoenas and CIDs 7 in order for Abbott to review its prices; is that 8 correct? 9 MS. TABACCHI: Object to the form, 10 beyond the scope of the Notice. 11 THE WITNESS: I don't know that Abbott 12 began reviewing its prices in 2000. I don't know 13 that. 14 BY MR. ANDERSON: 15 Q. You mean that this memo that was created 16 on or about October and November of 2000 doesn't 17 indicate to you that there were some analysis of 18 the vanco prices? 19 MS. TABACCHI: Objection, beyond the 20 scope, object to the form. 21 THE WITNESS: Well, obviously there was 22 some construction of the historical position of</p>

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<p>1 vanco that was done.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Right. Why wasn't that done earlier?</p> <p>4 MS. TABACCHI: Objection, beyond the</p> <p>5 scope, object to the form.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. As Abbott's corporate representative,</p> <p>9 why was an analysis of Abbott's pricing of</p> <p>10 vancomycin not conducted in 1995 when the prices</p> <p>11 were decreased and then subsequently re-increased?</p> <p>12 MS. TABACCHI: Objection, beyond the</p> <p>13 scope, object to the form.</p> <p>14 THE WITNESS: That activity was purely</p> <p>15 between two business segments within HPD. It did</p> <p>16 not have a broad involvement of others in the</p> <p>17 division --</p> <p>18</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. The two organizations --</p> <p>21 A. -- in 1995.</p> <p>22 Q. The two groups you're referring to</p>	<p>1 price on vancomycin. There was no price setting</p> <p>2 by Home Infusion Services. It was purely</p> <p>3 recognition of the fact that all price setting was</p> <p>4 done by HBS.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. And upon the request of Home Infusion,</p> <p>7 Contract Marketing within the Hospital Business</p> <p>8 Sector did in fact lower the vanco list price;</p> <p>9 correct?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: They consented to the</p> <p>12 request for a period of time.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. Which caused the AWP to come down for a</p> <p>15 period of time; correct?</p> <p>16 MS. TABACCHI: Object to the form,</p> <p>17 beyond the scope.</p> <p>18 THE WITNESS: I don't know whether the</p> <p>19 announcement of reduction and increase, whether</p> <p>20 that hit a reporting cycle for one of the agencies</p> <p>21 or not. I have no information on that.</p> <p>22 BY MR. ANDERSON:</p>
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<p>1 within the HPD organization are Alternate Site on</p> <p>2 the one hand and HBS Contract Marketing on the</p> <p>3 other hand; correct?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Home Infusion on one hand.</p> <p>6 BY MR. ANDERSON:</p> <p>7 Q. Which is part of the Alternate Site?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: But it's not Alternate</p> <p>10 Site in its entirety.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Right.</p> <p>13 A. But Home Infusion and a manager in HBS</p> <p>14 Contract Marketing, yes.</p> <p>15 Q. So when it came to publishing list</p> <p>16 prices back in 1995 on vanco, those two groups</p> <p>17 were working together; correct?</p> <p>18 MS. TABACCHI: Object to the form,</p> <p>19 mischaracterizes the testimony, beyond the scope.</p> <p>20 THE WITNESS: No. There was a request,</p> <p>21 as I've said before, there was a request submitted</p> <p>22 by Home Infusion Services to evaluate a lower</p>	<p>1 Q. Well, let's go ahead and look at Exhibit</p> <p>2 28 some more, or 27 as well.</p> <p>3 Looking at that paragraph that we</p> <p>4 looked at before --</p> <p>5 A. The last one? Is that the one you're</p> <p>6 referring to?</p> <p>7 Q. I'm actually referring to the second to</p> <p>8 last one.</p> <p>9 A. Okay.</p> <p>10 Q. Do you see there that an AWP is</p> <p>11 described?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. I'll rephrase.</p> <p>15 Do you see, sir, a reference to the</p> <p>16 vancomycin AWP?</p> <p>17 A. Yes.</p> <p>18 Q. So there was some awareness at Abbott</p> <p>19 that the changes in list prices, a/k/a catalog</p> <p>20 prices, in 1995 impacted the AWP on vanco;</p> <p>21 correct?</p> <p>22 MS. TABACCHI: Object to the form,</p>

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<p>1 beyond the scope.</p> <p>2 THE WITNESS: This summary done in</p> <p>3 retrospect could be inferred to see that.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. And that's consistent with, for</p> <p>6 instance, Exhibit 25 that's written back in March</p> <p>7 of 1995 that references changes in AWP; correct?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: It's consistent with Gerry</p> <p>10 Eichhorn's opinion that was expressed in 25.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Okay. Now, looking back at Exhibit 27,</p> <p>13 reading from the second paragraph of the summary,</p> <p>14 quote "Vancomycin's price is based on the product,</p> <p>15 its uses, and the cost of," and then there's some</p> <p>16 stricken language that read "patent-protected</p> <p>17 compound" and there's some new underlined language</p> <p>18 that reads "branded product."</p> <p>19 Did I read that correctly?</p> <p>20 MS. TABACCHI: Objection, beyond the</p> <p>21 scope.</p> <p>22 THE WITNESS: I'm sorry. Could you --</p>	<p>1 A. No.</p> <p>2 Q. But you just know how it was done?</p> <p>3 A. Yes.</p> <p>4 Q. Who did you learn that from?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall that after Abbott had</p> <p>7 launched its vanco that the next year the list</p> <p>8 price, and accordingly the AWP, roughly doubled?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 beyond the scope.</p> <p>11 THE WITNESS: No. I don't recall that.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Do you have any reason to dispute the</p> <p>14 historical Red Books that reflect Abbott's</p> <p>15 vancomycin having a list price and in turn an AWP</p> <p>16 that roughly doubled --</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. -- between '88 and '89?</p> <p>20 MS. TABACCHI: Beyond the scope of the</p> <p>21 Notice.</p> <p>22 THE WITNESS: It would be inconsistent</p>
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<p>1 BY MR. ANDERSON:</p> <p>2 Q. I'm reading from the second paragraph in</p> <p>3 the Summary section.</p> <p>4 A. Oh, okay. I was down a little too low</p> <p>5 on that. Okay.</p> <p>6 Q. Is that a true statement?</p> <p>7 MS. TABACCHI: Object to the form,</p> <p>8 beyond the scope.</p> <p>9 THE WITNESS: It's a confusing statement</p> <p>10 to me.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Has Abbott ever set the price of its</p> <p>13 vanco based on the price of Lily's brand product?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: When we introduced the</p> <p>16 product, when Lily's patent expired.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. And how do you know that?</p> <p>19 A. I was in the Product Sales component of</p> <p>20 home care at the time.</p> <p>21 Q. Were you involved in setting the list</p> <p>22 price on vanco when it was launched?</p>	<p>1 with my recollection.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Can you think of any reason why Abbott's</p> <p>4 vancomycin would have a list price and in turn an</p> <p>5 AWP that would double?</p> <p>6 MS. TABACCHI: Same objections.</p> <p>7 THE WITNESS: I do not remember a change</p> <p>8 in, and it would be inconsistent with Abbott</p> <p>9 taking a price increase on a new generic that soon</p> <p>10 after introduction, number one.</p> <p>11 Number two, I do remember some</p> <p>12 point after our introduction after Lily's patent</p> <p>13 expired, Lily made some adjustment to their list</p> <p>14 price down. I don't remember the magnitude of</p> <p>15 that adjustment, but I do remember that they took</p> <p>16 their list price down. And I remember some</p> <p>17 discussion of trying to figure out why they did</p> <p>18 that, but that's all I recall.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. When did that discussion occur?</p> <p>21 MS. TABACCHI: Objection, beyond the</p> <p>22 scope.</p>

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<p style="text-align: right;">Page 573</p> <p>1 THE WITNESS: Like I said, it was after 2 our introduction of vancomycin. It was not years, 3 it was, you know, six to twelve months afterwards. 4 BY MR. ANDERSON: 5 Q. So back in the late '80s you were 6 involved in discussions about Abbott's vanco AWP 7 being higher than the Lily brand AWP? 8 MS. TABACCHI: Object to the form, 9 beyond the scope. 10 THE WITNESS: The discussions that I 11 vaguely remember relate to trying to understand 12 what tactical plan that Lily had for reducing 13 their prices. 14 BY MR. ANDERSON: 15 Q. What tactical plan did Abbott have with 16 respect to its AWP and list price being higher 17 than the brand Lily list price and AWP? 18 MS. TABACCHI: Object to the form, 19 beyond the scope. 20 THE WITNESS: Our practice for new 21 generics at that point in time and probably up 22 through the middle of 1995 for any new products</p>	<p style="text-align: right;">Page 575</p> <p>1 down. 2 A. Again, I don't accept, or I don't have a 3 recollection of our list price doubling on that 4 product. 5 The only explanation I have is that 6 in comparison to the Lily prices, it would look 7 like ours were a larger factor than they were when 8 we originally introduced, mainly because Lily 9 reduced their price. 10 Q. Well, I understand, sir, that if the 11 Lily list and AWP come down below the Abbott 12 generic list and AWP, that that could look 13 strange. But I'm asking a slightly different 14 question, and that is not only is Lily decreasing 15 their brand list and AWP, but around the same 16 timeframe in the late '80s Abbott is actually 17 roughly doubling its list and in turn AWP on its 18 vancomycin. Can you explain that? 19 A. You've said that a number of times. 20 MS. TABACCHI: Object to the form, 21 beyond the scope. 22 THE WITNESS: That isn't my</p>
<p style="text-align: right;">Page 574</p> <p>1 that we introduced where the branded product lost 2 patent protection, we would price our drug on a 3 list price basis at or near where the innovator 4 was, never over, but equal to or a little less 5 than, knowing full well that after our 6 introduction that contract prices would plummet. 7 So, again, the list price was just 8 a placeholder as far as we were concerned, and the 9 contract prices would go down. That's what we had 10 traditionally seen with any product that we 11 introduced. 12 So it wasn't until 2001 that we 13 instituted the practice of adjusting WAC and list 14 price to be commensurate with that reduction that 15 would happen invariably on a generic item. 16 BY MR. ANDERSON: 17 Q. Objection, nonresponsive. 18 Sir, I'm asking a specific question 19 about Abbott's strategy with respect to Abbott 20 having an AWP and list price that are doubling in 21 quantity while around the same timeframe Lily's 22 brand list price and AWP are coming significantly</p>	<p style="text-align: right;">Page 576</p> <p>1 recollection. You want to show me some numbers? 2 BY MR. ANDERSON: 3 Q. But you do recall, don't you, sir, that 4 from the early '90s all the way through 2000 what 5 Abbott typically did on vancomycin was each year 6 they just took some kind of standard increase on 7 the list price and reported that to the compendia? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I've said multiple times 10 that in looking back over this time period, and in 11 particular with vancomycin, vancomycin appears to 12 have taken inflationary increases on an annual 13 basis on list price throughout '91 through '99, or 14 '92, whenever we actually increased prices on 15 vanco. That was not in coordination with where 16 our contract prices were going at the same time, 17 which I've said before, you know, has been a 18 disparity in place that we called inadvertent 19 because we believed that they were going due to 20 two different and discreet actions were taking 21 place and neither of the two were looked at 22 together.</p>

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<p style="text-align: right;">Page 577</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. You just mentioned the word</p> <p>3 "inadvertent," and in your testimony a couple</p> <p>4 weeks ago in this case as a 30(b)(6) witness I</p> <p>5 think you used the word about ten times.</p> <p>6 A. Thank you.</p> <p>7 Q. Was anything inadvertent about the vanco</p> <p>8 price decrease and subsequent price increase in</p> <p>9 1995?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Was it a mistake?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: It wasn't what I wanted to</p> <p>15 happen as the general manager of Home Infusion</p> <p>16 Services, but it happened.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. But was it inadvertent?</p> <p>19 A. No. It was not inadvertent.</p> <p>20 Q. It was done purposefully; wasn't it?</p> <p>21 MS. TABACCHI: Object to form.</p> <p>22 THE WITNESS: There were discreet</p>	<p style="text-align: right;">Page 579</p> <p>1 MS. TABACCHI: Let's take a break while</p> <p>2 we're switching the tape.</p> <p>3 THE VIDEOGRAPHER: We are off the record</p> <p>4 at 3:15 p.m. with the end of Tape No. 4.</p> <p>5 (WHEREUPON a recess was taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on the</p> <p>7 record at 3:30 p.m. with the start of Tape No. 5.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. Continuing on where we were,</p> <p>10 Mr. Sellers, in looking at the footer for the</p> <p>11 Exhibit 27 memo titled "VancomycinCPA.doc."</p> <p>12 A. Yes.</p> <p>13 Q. Do you believe that the initials "CPA"</p> <p>14 in that context stand for catalog price</p> <p>15 adjustment?</p> <p>16 MS. TABACCHI: Objection, beyond the</p> <p>17 scope, object to the form.</p> <p>18 THE WITNESS: I don't know exactly what</p> <p>19 it refers to.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. Does it seem reasonable to infer that</p> <p>22 "CPA" in that context stands for catalog price</p>
<p style="text-align: right;">Page 578</p> <p>1 decisions made.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. And in turn implemented?</p> <p>4 A. Yes.</p> <p>5 Q. And that could have been done, or</p> <p>6 rectified rather, from 1995, '96, '97, '98, '99,</p> <p>7 2000, all the way up until it finally was</p> <p>8 corrected in 2001; correct?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 beyond the scope of the Notice.</p> <p>11 THE WITNESS: Could have been.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. But it wasn't --</p> <p>14 MS. TABACCHI: Same objections.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. -- was it?</p> <p>17 A. No, it wasn't, because the people that</p> <p>18 control that price didn't look at it that way.</p> <p>19 We've talked about that before. It</p> <p>20 was not seen as a discreet product when it came to</p> <p>21 catalog increases.</p> <p>22 MR. ANDERSON: Let's switch the tape.</p>	<p style="text-align: right;">Page 580</p> <p>1 adjustment?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: It wouldn't be my first</p> <p>4 assumption.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. You don't think it stands for certified</p> <p>7 public accountant; do you?</p> <p>8 A. No.</p> <p>9 Q. What do you think "CPA" stands for?</p> <p>10 MS. TABACCHI: Object to the form,</p> <p>11 beyond the scope.</p> <p>12 THE WITNESS: Based on the two</p> <p>13 documents, I would infer it to be Corporate Public</p> <p>14 Affairs.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Do you think that Corporate Public</p> <p>17 Affairs was involved in creating what's marked as</p> <p>18 Exhibits 27 and 28?</p> <p>19 MS. TABACCHI: Objection, beyond the</p> <p>20 scope, object to the form.</p> <p>21 THE WITNESS: Yes, I believe so.</p> <p>22 BY MR. ANDERSON:</p>

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<p style="text-align: right;">Page 581</p> <p>1 Q. Was this vancomycin analysis performed</p> <p>2 in or about the same time period that you were</p> <p>3 conducting your catalog price adjustment analysis?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 beyond the scope.</p> <p>6 THE WITNESS: It was preceding it</p> <p>7 slightly.</p> <p>8 Again, I'm going from the date</p> <p>9 here. Since I don't recall the document, I can't</p> <p>10 give you anything more than the timing that's on</p> <p>11 the document itself.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Yeah. We'll get to the catalog price</p> <p>14 adjustment memo that you wrote. I'll tell you I</p> <p>15 think it's dated like January 18, '01. So that's</p> <p>16 a few months after obviously October and November</p> <p>17 of 2000; correct?</p> <p>18 A. Right. I think I've testified before</p> <p>19 that my recollection of the catalog price</p> <p>20 adjustment project was December through the first</p> <p>21 quarter of 2001, December 2000 through the first</p> <p>22 quarter of 2001.</p>	<p style="text-align: right;">Page 583</p> <p>1 through 2000?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: If you're talking about</p> <p>4 published prices, our published prices as I</p> <p>5 remember looking at it reflected general</p> <p>6 inflationary increases. That is, inflation</p> <p>7 applies to the whole market.</p> <p>8 If you're talking about contract</p> <p>9 prices, which this doesn't contemplate a</p> <p>10 difference between the two, our contract prices</p> <p>11 were definitely in response to the competitive</p> <p>12 environment and the commitments the customers were</p> <p>13 willing to give us.</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. All right. Let's set aside the contract</p> <p>16 prices and focus for a moment on the published</p> <p>17 catalog, a/k/a list price.</p> <p>18 What market factors did Abbott</p> <p>19 consider in taking inflationary price increases on</p> <p>20 those published prices from 1991 through 2000?</p> <p>21 MS. TABACCHI: Object to the form, asked</p> <p>22 and answered.</p>
<p style="text-align: right;">Page 582</p> <p>1 Q. Now, in looking at the second paragraph</p> <p>2 again of Exhibits 27 and 28, I'm going to read the</p> <p>3 next sentence. Quote "Abbott has made price</p> <p>4 adjustments in response to the common market</p> <p>5 factors, customer commitments, competitive</p> <p>6 environment."</p> <p>7 Did I read that correctly?</p> <p>8 A. That's on No. 27; right?</p> <p>9 Q. It's the second sentence in the second</p> <p>10 paragraph in the Summary section from both 27 and</p> <p>11 28.</p> <p>12 A. Oh, I was looking at the wrong page on</p> <p>13 28. Sorry about that.</p> <p>14 Q. It's all right.</p> <p>15 A. Yes.</p> <p>16 Q. Is that a true statement?</p> <p>17 MS. TABACCHI: Object to the form,</p> <p>18 beyond the scope.</p> <p>19 THE WITNESS: I believe so.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. What vancomycin prices were adjusted in</p> <p>22 response to common market factors from 1991</p>	<p style="text-align: right;">Page 584</p> <p>1 THE WITNESS: Again, inflation covers</p> <p>2 every part of the market. It covers our labor</p> <p>3 cost, it also covers our raw material cost, and</p> <p>4 our manufacturing process costs.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. In order to recover those costs that may</p> <p>7 be increasing with inflation, doesn't a</p> <p>8 manufacturer actually have to receive payment at</p> <p>9 that price?</p> <p>10 MS. TABACCHI: Object to the form,</p> <p>11 beyond the scope of the Notice.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. If Abbott's taking inflationary</p> <p>15 increases that are not actually being paid by</p> <p>16 customers, how can Abbott in turn recover</p> <p>17 inflationary cost such as labor?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: All of our prices were</p> <p>20 looked at in terms of a component of our overall</p> <p>21 revenue.</p> <p>22 There were some sales at list</p>

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<p style="text-align: right;">Page 585</p> <p>1 price. And whether there were sales at list price 2 for vancomycin or not, I'm sure you guys have 3 looked at our sales data more than I have to 4 identify that. But in general across all of our 5 catalog items, there were some sales. So we 6 expected to recoup those on those sales. 7 Also, as I said the last time, 8 about a week ago, some of those CPIU values were 9 used for us to take increases on our contracts as 10 well. So we did get ultimately paid some portion 11 of the price increases that we took. 12 BY MR. ANDERSON: 13 Q. Do you recall analyzing the catalog 14 prices and writing a conclusion that less than one 15 percent of the sales were at list or catalog 16 price? 17 A. In 2001, yes. 18 Q. How can Abbott go about recovering labor 19 expenses that are increasing due to inflation, for 20 instance, if it's only charging its increased list 21 prices less than one percent of the time? 22 MS. TABACCHI: Object to the form, asked</p>	<p style="text-align: right;">Page 587</p> <p>1 Did I read that correctly? 2 A. Yes. 3 Q. Is that a true statement? 4 MS. TABACCHI: Object to the form, 5 beyond the scope. 6 THE WITNESS: Yes, I believe it is. 7 BY MR. ANDERSON: 8 Q. Was Abbott's pricing of vancomycin in 9 line with Medicare and Medicaid laws in May of 10 1995 when the price was increased? 11 MS. TABACCHI: Object to the form, 12 beyond the scope of the Notice. 13 THE WITNESS: The price ultimately took 14 an inflationary increase -- 15 BY MR. ANDERSON: 16 Q. And was that increase -- 17 A. -- in 1995. 18 Q. And was that increase in Abbott's view 19 in line with laws? 20 MS. TABACCHI: Object to the form, 21 beyond the scope of the Notice. 22 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 586</p> <p>1 and answered, beyond the scope. 2 THE WITNESS: I didn't say that that was 3 the sole attempt that we had at recovering 4 increased costs. It was one component. 5 BY MR. ANDERSON: 6 Q. All right. Other than sales at list or 7 catalog price at less than one percent of the 8 transactions, what other market factors did Abbott 9 consider in adjusting the prices of vancomycin 10 from 1991 through 2000? 11 A. For the list price, which is what you've 12 tried to narrow this statement to, for the list 13 price that's the primary factor. 14 Q. All right. Now, continuing on, the last 15 paragraph of the first page of the memo titled 16 "Issue: Vancomycin," which is part of Exhibits 27 17 and 28, I'm reading for the benefit of the record, 18 quote "The Medicare laws were designed to provide 19 healthcare providers with reimbursement for the 20 product and the cost associated with administering 21 them. Vancomycin's pricing structure has been in 22 line with these laws."</p>	<p style="text-align: right;">Page 588</p> <p>1 MS. TABACCHI: The witness is not here 2 to testify about the law. 3 BY MR. ANDERSON: 4 Q. Why? On what do you make that 5 statement? 6 MS. TABACCHI: Same objections. 7 THE WITNESS: To my knowledge, there 8 were no laws specifying how you could price drugs. 9 BY MR. ANDERSON: 10 Q. What efforts have you made to understand 11 any issues surrounding the legality of Abbott's 12 price changes on vancomycin in 1995? 13 MS. TABACCHI: Object to the form, 14 beyond the scope of the Notice. The witness is 15 not here to testify about the legality. 16 THE WITNESS: That issue is not 17 pertinent to vancomycin on its own. 18 BY MR. ANDERSON: 19 Q. So is the answer to my question "None"? 20 MS. TABACCHI: Object to the form, 21 argumentative, same objections. 22 THE WITNESS: The answer is vancomycin</p>

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<p style="text-align: right;">Page 589</p> <p>1 is not singled out in any law that I know of. 2 BY MR. ANDERSON: 3 Q. Well, I didn't ask if it was singled 4 out, sir. I asked if there was any effort on your 5 part as the corporate representative testifying 6 about the vanco price changes in 1995 to ascertain 7 whether those changes were in compliance with 8 laws? 9 MS. TABACCHI: Object to the form, 10 beyond the scope of the Notice. 11 THE WITNESS: I ran the Contract 12 Marketing department from 1990 to 1992. I also 13 ran it from 2000 up through 2004. I was never 14 made aware of any price restriction on a product 15 for list price. 16 BY MR. ANDERSON: 17 Q. Objection, nonresponsive. 18 Sir, as the corporate 19 representative, are you aware of any effort that 20 Abbott undertook to ascertain whether the price 21 manipulation that it undertook in and around April 22 and May of 1995 on vancomycin complied with laws?</p>	<p style="text-align: right;">Page 591</p> <p>1 for Abbott's vanco while it was sixty percent in 2 Alternate Site"? 3 MS. TABACCHI: Object to the form, 4 beyond the scope of the Notice. 5 THE WITNESS: In 1996. 6 BY MR. ANDERSON: 7 Q. Yes, sir. 8 A. Yes. 9 Q. So Abbott did a lot better in the 10 Alternate Site arena where AWP was important 11 versus the hospital arena; didn't it? 12 MS. TABACCHI: Object to the form, 13 beyond the scope of the Notice, mischaracterizes 14 the testimony and the document. 15 THE WITNESS: I think if you look at 16 this timeframe, that the overall gross utilization 17 of vancomycin was higher in Alternate Site across 18 the board for the market than in the hospitals. 19 What caused HCFA to go and take 20 vanco off was because of the accelerated use of 21 vancomycin in Alternate Site. And the fear that 22 was being forwarded by the pharmacists societies</p>
<p style="text-align: right;">Page 590</p> <p>1 MS. TABACCHI: Object to the form, 2 beyond the scope of the Notice. This is 3 argumentative and improper. 4 THE WITNESS: Not as an individual 5 action, no. 6 BY MR. ANDERSON: 7 Q. Why didn't Abbott reduce its vancomycin 8 catalog and in turn AWP price when Lily decreased 9 the brand list and AWP price? 10 MS. TABACCHI: Object to the form, 11 beyond the scope of the Notice. 12 THE WITNESS: We didn't see a need to. 13 Nothing that we were selling in the hospital 14 environment, again, the hospital was our primary 15 market and has been our primary market for 16 vancomycin, saw no need to make an adjustment. 17 BY MR. ANDERSON: 18 Q. Looking at the second page of the memo 19 titled "Issue: Vancomycin," which is Exhibits 27 20 and 28, do you see in the middle of the page under 21 Sales and Marketing a paragraph that states "The 22 market share for hospital was thirty-seven percent</p>	<p style="text-align: right;">Page 592</p> <p>1 that continuing to support vancomycin utilization 2 would endanger its status as a product or an 3 antibiotic of last resort. 4 BY MR. ANDERSON: 5 Q. Objection, nonresponsive. 6 Sir, this is a market share 7 percentage; correct? 8 MS. TABACCHI: Object to the form, 9 beyond the scope. 10 THE WITNESS: No. As I understand it, 11 the way it's written, it is a split of our sales 12 of our vancomycin. 13 So as I understand the statement, 14 they're saying thirty-seven percent of the 15 vancomycin we sold went into hospitals in 1996, 16 sixty percent went into Alternate Site. 17 BY MR. ANDERSON: 18 Q. Why do you say that, sir? 19 MS. TABACCHI: Same objections. 20 THE WITNESS: It's just the way I read 21 that sentence. 22 BY MR. ANDERSON:</p>

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<p style="text-align: right;">Page 593</p> <p>1 Q. Did Abbott succeed in selling more 2 drugs, more vancomycin products, in the Alternate 3 Site arena in comparison to its competitors than 4 it did in the hospital arena? 5 MS. TABACCHI: Object to the form, 6 beyond the scope. 7 THE WITNESS: It may have. 8 BY MR. ANDERSON: 9 Q. Do you know that it did? 10 MS. TABACCHI: Same objections. 11 THE WITNESS: I don't know that it did. 12 BY MR. ANDERSON: 13 Q. Why do you say that it may have? 14 MS. TABACCHI: Now you're asking the 15 witness to speculate. It's beyond the scope. 16 MR. ANDERSON: No, I'm not. He 17 testified that it may have. I'm just trying to 18 understand the process. 19 THE WITNESS: Overall we were successful 20 with vancomycin. We were successful with 21 vancomycin primarily because vancomycin is a very 22 hard drug to manufacture and manufacture</p>	<p style="text-align: right;">Page 595</p> <p>1 to its competitors on vancomycin than it was in 2 the hospital arena? 3 MS. TABACCHI: Objection, beyond the 4 scope, asked and answered. 5 THE WITNESS: I think I answered that 6 question. 7 BY MR. ANDERSON: 8 Q. The same dynamics, sir, that you've just 9 described about the making of vanco would apply in 10 the hospital arena and in the Alternate Site 11 arena. 12 A. Uh-huh. 13 Q. Am I right? 14 A. Uh-huh. 15 Q. So setting aside manufacturing 16 capability, I'm asking why did you say Abbott may 17 have been more successful in the Alternate Site 18 arena in comparison to its competitors on vanco 19 than it was in the hospital arena? 20 MS. TABACCHI: Object to the form, 21 beyond the scope. 22 THE WITNESS: Again, I've explained the</p>
<p style="text-align: right;">Page 594</p> <p>1 consistently. 2 It is a freeze-dried powdered 3 product. For one thing there are very few 4 manufactures in the United States, or even the 5 world, that have adequate freeze-drying capacity 6 for pharmaceuticals. And throughout this time 7 period we were successful because others stumbled 8 in their ability to consistently provide quality 9 product through this process. 10 And so, as I said before, what 11 we've marketed all along is we've marketed 12 competitive prices, contract prices, a broad 13 portfolio of products, quality products, and 14 dependability of delivery. And I think 15 vancomycin, if you look at this timeframe, is a 16 perfect example of how dependability of delivery 17 garnered business from our competitors. 18 BY MR. ANDERSON: 19 Q. Objection, nonresponsive. 20 Sir, my question was why did you 21 testify Abbott may have been more successful in 22 selling in the Alternate Site arena in comparison</p>	<p style="text-align: right;">Page 596</p> <p>1 reason I believe so. I don't have any other facts 2 to tell you. 3 BY MR. ANDERSON: 4 Q. Did it have anything to do with the 5 reimbursement in the Alternate Site arena as to 6 why Abbott may have been more successful against 7 its competitors there as opposed to the hospital 8 arena? 9 MS. TABACCHI: Object to the form, 10 beyond the scope. 11 THE WITNESS: I don't have any facts to 12 tell me that's the case. 13 BY MR. ANDERSON: 14 Q. Do you have some general understanding 15 that that's the case? 16 A. No. 17 MS. TABACCHI: Same objections. 18 BY MR. ANDERSON: 19 Q. Do you know that some sales reps of 20 Abbott Alternate Site have sworn under oath in 21 this case that that was the situation? 22 MS. TABACCHI: Same objections.</p>

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<p>1 THE WITNESS: I'm not familiar with</p> <p>2 that.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. You haven't read the testimony of Ted</p> <p>5 Lyjak?</p> <p>6 MS. TABACCHI: Object to the form,</p> <p>7 beyond the scope of the Notice.</p> <p>8 THE WITNESS: No, I haven't.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. Have you read the testimony of Cliff</p> <p>11 Krajewski?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: No.</p> <p>14</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Back to my original question. Why when</p> <p>17 Lily decreased its list price -- no, strike that.</p> <p>18 I'll ask a predicate question.</p> <p>19 Sir, is it true that you've</p> <p>20 testified that the reason Abbott set its vanco</p> <p>21 list price initially was predicated on Lily's</p> <p>22 brand price?</p>	<p>1 THE WITNESS: I don't think our tactic</p> <p>2 has ever been to follow the brand. Our tactic has</p> <p>3 been to be better or equivalent to the brand at</p> <p>4 the point of patent expiration. And I think</p> <p>5 that's consistent with what we did.</p> <p>6 BY MR. ANDERSON:</p> <p>7 Q. I'm not talking about quality of product</p> <p>8 here, sir. I'm talking about pricing.</p> <p>9 A. I was referring to pricing.</p> <p>10 Q. It's Abbott's strategy historically to</p> <p>11 price above the brand --</p> <p>12 MS. TABACCHI: Object.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. -- with respect to published list</p> <p>15 prices?</p> <p>16 MS. TABACCHI: Object to the form,</p> <p>17 beyond the scope.</p> <p>18 THE WITNESS: No. I said that it was</p> <p>19 not the practice to I think your term was to</p> <p>20 follow the brand, it was not the practice to</p> <p>21 follow the brand.</p> <p>22 The practice was to make sure at</p>
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<p>1 MS. TABACCHI: Objection, beyond the</p> <p>2 scope.</p> <p>3 THE WITNESS: At the time of</p> <p>4 introduction, yes.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Okay. Knowing that, why when Lily</p> <p>7 decreased its list price that Abbott had</p> <p>8 previously worked off of did Abbott not follow</p> <p>9 suit and likewise decrease its list price?</p> <p>10 MS. TABACCHI: Objection, beyond the</p> <p>11 scope, asked and answered.</p> <p>12 THE WITNESS: I don't have a specific</p> <p>13 reason other than the people that were controlling</p> <p>14 that price, it was a quandary to them as to why</p> <p>15 Lily reduced their price.</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q. If Abbott is interested in following the</p> <p>18 corresponding brand list price, wouldn't it stand</p> <p>19 to reason that Abbott would decrease its list</p> <p>20 price when the brand is decreased?</p> <p>21 MS. TABACCHI: Object to the form,</p> <p>22 beyond the scope.</p>	<p>1 introduction we had a price that was equal to or</p> <p>2 better than the innovator.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. What do you mean "better"?</p> <p>5 A. Lower.</p> <p>6 Q. Lower. How much lower?</p> <p>7 MS. TABACCHI: Object to the form,</p> <p>8 beyond the scope.</p> <p>9 THE WITNESS: It depended upon the</p> <p>10 continuum.</p> <p>11 I think vancomycin was one of the</p> <p>12 early products that came off patent. I think it</p> <p>13 came off patent in 1988 or '89, something like</p> <p>14 that. In later years, in the late 1990s, our</p> <p>15 practice might have been to price the Abbott drug</p> <p>16 that was coming in following the innovator a</p> <p>17 little below the innovator but never over the</p> <p>18 innovator, at introduction.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. So given Abbott's awareness back in the</p> <p>21 late '80s that its list price was greater than the</p> <p>22 Lily innovator vanco, why did Abbott allow that</p>

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<p style="text-align: right;">Page 601</p> <p>1 situation to continue?</p> <p>2 MS. TABACCHI: Object to the form,</p> <p>3 beyond the scope.</p> <p>4 THE WITNESS: Again, I think it</p> <p>5 highlights the "inadvertent" that I used before.</p> <p>6 It highlights the fact that the people that were</p> <p>7 controlling the list price had no knowledge of</p> <p>8 what relationship list price had to anything. So</p> <p>9 when Lily reduced its price, they wondered what</p> <p>10 tactic Lily was using, they couldn't figure out</p> <p>11 one, we were continuing to sell our product, so</p> <p>12 they just let, it got dropped.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. And that's your testimony on behalf of</p> <p>15 the corporation despite the analysis that was</p> <p>16 conducted and the actions that were taken in</p> <p>17 decreasing list prices on vanco in 1995 and then</p> <p>18 subsequently re-increasing those list prices?</p> <p>19 MS. TABACCHI: Object to the form,</p> <p>20 beyond the scope.</p> <p>21 THE WITNESS: Again, they were discreet</p> <p>22 separate actions, probably handled by different</p>	<p style="text-align: right;">Page 603</p> <p>1 Q. They were there from 1991 all the way</p> <p>2 through 2003?</p> <p>3 A. Yes.</p> <p>4 Q. So there was some continuity there;</p> <p>5 wasn't there?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: There was. They weren't</p> <p>8 price decision making decisions.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. Harry wasn't a price decision maker?</p> <p>11 A. No.</p> <p>12 Q. Jerrie was the point of contact when all</p> <p>13 of the catalog and list prices were published;</p> <p>14 wasn't she?</p> <p>15 A. Yes.</p> <p>16 Q. Sir, is it your testimony that Abbott's</p> <p>17 reason for the list prices was to garner some</p> <p>18 incremental sales albeit less than one percent</p> <p>19 list price?</p> <p>20 MS. TABACCHI: Object to the form, asked</p> <p>21 and answered.</p> <p>22 THE WITNESS: I'm not sure I understand</p>
<p style="text-align: right;">Page 602</p> <p>1 people.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Why do you say "probably"?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 beyond the scope.</p> <p>6 THE WITNESS: Because we typically moved</p> <p>7 managers through Contract Marketing pretty</p> <p>8 regularly. Contract Marketing was a management</p> <p>9 training position.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. Harry Adams never left; did he?</p> <p>12 MS. TABACCHI: Objection, beyond the</p> <p>13 scope.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Jerrie Cicerale never left; did she?</p> <p>17 A. No.</p> <p>18 Q. They were there for well over a decade;</p> <p>19 weren't they?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. ANDERSON:</p>	<p style="text-align: right;">Page 604</p> <p>1 your question.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Well, is Abbott's purpose in having list</p> <p>4 prices to sell at list price?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Our list price was</p> <p>7 intended for customers who did not have a contract</p> <p>8 with Abbott who bought directly from Abbott. So</p> <p>9 that was the purpose of our list price, yes.</p> <p>10</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. And you quantified it as less than one</p> <p>13 percent of the sales; correct?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: In 2001. I qualified it</p> <p>16 as saying that was in a document that I authored</p> <p>17 in 2001.</p> <p>18 I also said in past testimony that</p> <p>19 I believe that percentage changed. If you look at</p> <p>20 the period 1991 on, I believe it was higher in</p> <p>21 around 1991.</p> <p>22 It also changed year to year based</p>

<p style="text-align: right;">Page 605</p> <p>1 on problems that our competitors had.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. If Abbott's purpose was to sell product</p> <p>4 at list price and be competitive with its</p> <p>5 competitors, why when Lily decreased its list</p> <p>6 price would Abbott not also decrease its list</p> <p>7 price in order to be competitive?</p> <p>8 MS. TABACCHI: Object to the form,</p> <p>9 beyond the scope.</p> <p>10 THE WITNESS: Our experience is that our</p> <p>11 primary customer, the hospital, was being serviced</p> <p>12 by contract for the most part, and so the list</p> <p>13 price, again, was for a small portion, I believe</p> <p>14 that back in 1991 it was larger than one percent,</p> <p>15 but a small portion of the sales that we would</p> <p>16 make.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. Would you agree with the basic premise</p> <p>19 that if Abbott's list price is significantly</p> <p>20 higher than Lily's list price, that Abbott will be</p> <p>21 at a disadvantage when it sells to customers at</p> <p>22 list price?</p>	<p style="text-align: right;">Page 607</p> <p>1 MS. TABACCHI: Object to the form,</p> <p>2 beyond the scope of the Notice.</p> <p>3 THE WITNESS: As I said earlier this</p> <p>4 morning, provider dispensing fees are the same</p> <p>5 regardless of whose vancomycin you use. So it</p> <p>6 would make no sense for us to try to accommodate</p> <p>7 those in our pricing.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. In looking at the last page of Exhibits</p> <p>10 27 and 28, specifically the last paragraph, do you</p> <p>11 agree that there's a commentary there discussing</p> <p>12 providers' complaints about inability to dispense</p> <p>13 and recover nursing labor?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I agree that in this</p> <p>16 document they appear to be trying to explain why</p> <p>17 some of our customers might have had a problem</p> <p>18 with a reduced reimbursement.</p> <p>19</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. In Abbott's view is any complaint about</p> <p>22 provider dispensing fees or administration fees</p>
<p style="text-align: right;">Page 606</p> <p>1 MS. TABACCHI: Object to the form,</p> <p>2 beyond the scope.</p> <p>3 THE WITNESS: For a noncontract customer</p> <p>4 who wants to buy vancomycin, or who wanted to buy</p> <p>5 vancomycin at that point in time, if they had the</p> <p>6 ability to buy it from Lily and the ability to buy</p> <p>7 it from Abbott, Lily's price on some of the forms</p> <p>8 was better than what Abbott had.</p> <p>9 But as I said before, a lot of or a</p> <p>10 number of our list price sales happened because</p> <p>11 there wasn't other product available. So in that</p> <p>12 case we wouldn't have been at a disadvantage</p> <p>13 because there wasn't competitive product</p> <p>14 available.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Objection, nonresponsive.</p> <p>17 Mr. Sellers, is there any</p> <p>18 justification in your view for Abbott, and when I</p> <p>19 say "your" I mean as the corporate designee, for</p> <p>20 Abbott to set published list prices or catalog</p> <p>21 prices at a certain level in consideration of</p> <p>22 provider dispensing fees?</p>	<p style="text-align: right;">Page 608</p> <p>1 somehow a justification for inflated list prices</p> <p>2 or catalog prices or AWP prices that set</p> <p>3 reimbursement for drug cost?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 beyond the scope of the Notice.</p> <p>6 THE WITNESS: It was never considered.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Never considered by whom?</p> <p>9 MS. TABACCHI: Same objections.</p> <p>10 THE WITNESS: It was never considered by</p> <p>11 anyone setting the prices, the list prices.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Was it ever considered by anyone at</p> <p>14 Abbott, to your knowledge, as the corporate</p> <p>15 designee?</p> <p>16 MS. TABACCHI: Object to the form,</p> <p>17 beyond the scope.</p> <p>18 THE WITNESS: Well, I mean we saw a</p> <p>19 document earlier today that Virginia Tobiason</p> <p>20 wrote that kind of talked about issues that</p> <p>21 providers would face.</p> <p>22 Other than that, no, in terms of</p>

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<p style="text-align: right;">Page 609</p> <p>1 pricing our product, it wasn't considered.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Do you believe as the corporate</p> <p>4 representative that Abbott would have been</p> <p>5 justified in raising its list prices on vanco in</p> <p>6 May of 1995 because providers complained about</p> <p>7 inability to recover dispensing fees or</p> <p>8 administration fees?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 beyond the scope.</p> <p>11 THE WITNESS: As I sit here today, I</p> <p>12 don't believe that's an issue, that was the issue.</p> <p>13 I've postulated for you what I</p> <p>14 believe the motivation was for raising the prices</p> <p>15 back up. It was between two people that were</p> <p>16 primarily focused on the hospital market. It did</p> <p>17 not involve a confab with Alternate Site and</p> <p>18 everybody else to decide hey, we're going to take</p> <p>19 the prices up.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. To sum it up, what you're saying is the</p> <p>22 sole reason for the vanco price increase in or</p>	<p style="text-align: right;">Page 611</p> <p>1 scope.</p> <p>2 THE WITNESS: By whom?</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. By providers.</p> <p>5 MS. TABACCHI: Object to the form,</p> <p>6 beyond the scope.</p> <p>7 THE WITNESS: Not by providers, no.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. By physicians?</p> <p>10 MS. TABACCHI: Same objections.</p> <p>11 THE WITNESS: As I said before, in and</p> <p>12 around '95 or '94, I can't remember which,</p> <p>13 preceding the decision by HCFA to halt</p> <p>14 reimbursement on their Plan B of, or under Part B,</p> <p>15 for vancomycin, there was a number of articles and</p> <p>16 letters to Congress, letters to HCFA, from</p> <p>17 pharmacy societies, the American Hospital Society</p> <p>18 of Pharmacists, I can't remember what the retail</p> <p>19 pharmacists is. But anyway, there was basically a</p> <p>20 call by clinical pharmacists saying that vanco was</p> <p>21 being overutilized or used when other antibiotics</p> <p>22 should have been used first. So that's what I</p>
<p style="text-align: right;">Page 610</p> <p>1 about May of '95 was some kind of wholesaler shelf</p> <p>2 stock adjustment; correct?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: It was the budget impact</p> <p>5 that would have been caused by that reduction to</p> <p>6 the Hospital Business Sector.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Yet you can't point to a single shred of</p> <p>9 testimony, witness interview, or documentation</p> <p>10 that supports that position; can you?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Again, I told you I looked</p> <p>13 at Gerry Eichhorn's deposition, and I believe he</p> <p>14 talks about a discussion with Harry Adams where</p> <p>15 they talk about hey, we only do this once a year.</p> <p>16 The only reason Harry would have a problem with</p> <p>17 that is that kind of issue.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. Are you aware as Abbott's corporate</p> <p>20 representative of any overutilization concerns</p> <p>21 related to vancomycin over the years?</p> <p>22 MS. TABACCHI: Objection, beyond the</p>	<p style="text-align: right;">Page 612</p> <p>1 remember.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Was any medical concern regarding</p> <p>4 overuse of vancomycin considered by Abbott in</p> <p>5 Abbott's decision to raise the list prices in or</p> <p>6 about May of 1995?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: No.</p> <p>9</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. But you do recall that Abbott had an</p> <p>12 awareness that there were concerns about</p> <p>13 overutilization of vanco prior to May of '95;</p> <p>14 correct?</p> <p>15 MS. TABACCHI: Object to the form,</p> <p>16 beyond the scope.</p> <p>17 THE WITNESS: I can't remember when</p> <p>18 those issues were raised. There were a few people</p> <p>19 that may have been aware of those issues being</p> <p>20 raised. But in general it wasn't, I don't think</p> <p>21 it was an issue across the board that everybody in</p> <p>22 HPD would have been aware of.</p>

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<p>1 BY MR. ANDERSON:</p> <p>2 Q. The memo titled "Issue: Vancomycin"</p> <p>3 that's part of Exhibits 27 and 28 --</p> <p>4 A. Yes.</p> <p>5 Q. -- that we've look at extensively today,</p> <p>6 do you feel like there's portions of that memo</p> <p>7 that are incorrect?</p> <p>8 MS. TABACCHI: Object to the form,</p> <p>9 beyond the scope of the Notice.</p> <p>10 THE WITNESS: Again, in retrospect</p> <p>11 knowing what I know today and what I've been able</p> <p>12 to piece together from the depositions, I don't</p> <p>13 think it's as complete a representation as I think</p> <p>14 I would have wanted it to be.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Why would Corporate Public Affairs</p> <p>17 personnel or anyone else at Abbott for that matter</p> <p>18 provide incorrect information to the CEO Miles</p> <p>19 White?</p> <p>20 MS. TABACCHI: Object to the form,</p> <p>21 beyond the scope, lack of foundation.</p> <p>22 THE WITNESS: I would doubt that they</p>	<p>1 You can filibuster if you want, I'm going to keep</p> <p>2 asking my questions. And we'll ask these</p> <p>3 questions at trial, and they will continue to be</p> <p>4 asked.</p> <p>5 MS. TABACCHI: That's fine. You use</p> <p>6 your time as you wish, but I have already</p> <p>7 explained to Ann that the deposition needs to</p> <p>8 conclude by 5:00 p.m. today. If this is what you</p> <p>9 want to do with your time --</p> <p>10 MR. ANDERSON: I want to get answers.</p> <p>11 MS. TABACCHI: The questions that you've</p> <p>12 posed have been answered.</p> <p>13 MR. ANDERSON: No. They have not. I</p> <p>14 have a question pending now that you interrupted.</p> <p>15 Please read it back.</p> <p>16 (WHEREUPON said record was read</p> <p>17 back as requested.)</p> <p>18 MS. TABACCHI: Object to the form,</p> <p>19 beyond the scope, lack of foundation.</p> <p>20 THE WITNESS: Again, I don't know</p> <p>21 whether I participated in that or not. I don't</p> <p>22 know whether Bob participated in it or not.</p>
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<p>1 felt it was incorrect. It was correct to the best</p> <p>2 of their knowledge at the time. If you were to</p> <p>3 ask somebody from Corporate Public Affairs, I</p> <p>4 think they would tell you that.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. So back in 2000 when the issue</p> <p>7 vancomycin memo was written, that was the best</p> <p>8 information available to Abbott?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 beyond the scope.</p> <p>11 Mr. Sellers did not create this.</p> <p>12 This is beyond the scope of the question. There's</p> <p>13 no foundation for this at all. We've spent hours</p> <p>14 on it.</p> <p>15 MR. ANDERSON: He is the corporate</p> <p>16 designee on vanco price changes.</p> <p>17 MS. TABACCHI: He's not the designee on</p> <p>18 what this document means.</p> <p>19 MR. ANDERSON: The entire document is</p> <p>20 about vanco price changes.</p> <p>21 You can grandstand all you want,</p> <p>22 Tina, but I'm going to keep asking my questions.</p>	<p>1 Again, would I say it was probably the best</p> <p>2 representation that Corporate Public Affairs had</p> <p>3 at the time.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. But now in 2008 you sit here as a</p> <p>6 corporate rep and you have read Harry Adams'</p> <p>7 testimony and Gerry Eichhorn's testimony and you</p> <p>8 have come up with a new explanation for the</p> <p>9 pricing of vancomycin; correct?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: While I don't know that</p> <p>12 it's new, I think it's I believe a little more</p> <p>13 educated attempt at trying to explain why the</p> <p>14 prices went up than that memo would have</p> <p>15 portrayed. So, again, it's the best I could put</p> <p>16 together from what I've been able to piece</p> <p>17 together. There's a lot of the 1995 in those</p> <p>18 testimonies where they didn't recall.</p> <p>19 So sitting here today thirteen</p> <p>20 years later, I'm trying to give you the best</p> <p>21 interpretation of what I believe may have happened</p> <p>22 in 1995.</p>

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<p>1 I've given you I believe a very</p> <p>2 discreet definition of what happened in terms of</p> <p>3 the price reductions. There's a lack of</p> <p>4 recollection in the participants of why it went</p> <p>5 back up. I'm trying to give you one potential</p> <p>6 answer as to why it went up, and I believe that</p> <p>7 it's based on the practices of the Hospital</p> <p>8 Products Division in that time and since that</p> <p>9 would make it consistent with that action being</p> <p>10 taken.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Would it stand to reason that Abbott's</p> <p>13 ability to analyze the pricing history on vanco</p> <p>14 would be more accurate in 2000 than eight years</p> <p>15 later in 2008?</p> <p>16 MS. TABACCHI: Object to the form,</p> <p>17 beyond the scope.</p> <p>18 THE WITNESS: Again, I don't know who</p> <p>19 worked to put that document together.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. I didn't ask you who worked to put it</p> <p>22 together, sir.</p>	<p>1 my question.</p> <p>2 THE WITNESS: Okay.</p> <p>3 MS. TABACCHI: Jarrett, if you continue</p> <p>4 to interrupt the witness and talk over him, we</p> <p>5 will stop the deposition. You allow him to finish</p> <p>6 his answer, then you pose the next question.</p> <p>7 MR. ANDERSON: If you want to stop the</p> <p>8 deposition, you do so at your own peril.</p> <p>9 MS. TABACCHI: If you continue to</p> <p>10 interrupt the witness in the middle of an answer,</p> <p>11 we will stop. I would ask you not to do that.</p> <p>12 MR. ANDERSON: Well, I would ask the</p> <p>13 witness to answer the questions.</p> <p>14 MS. TABACCHI: Allow him to answer the</p> <p>15 question and you pose your next question.</p> <p>16 MR. ANDERSON: He won't answer, hence we</p> <p>17 don't get anywhere.</p> <p>18 MS. TABACCHI: Don't interrupt him.</p> <p>19 He's providing the best answers he can.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. Mr. Sellers, will you agree that</p> <p>22 Abbott's ability to understand what it did on the</p>
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<p>1 A. Well, you're putting everything, you're</p> <p>2 putting everything --</p> <p>3 Q. I would like you to answer my question.</p> <p>4 A. You're putting everything on this</p> <p>5 document --</p> <p>6 Q. No, I'm not.</p> <p>7 A. -- as being this document is the Bible,</p> <p>8 and that is not, I'm saying I don't believe that</p> <p>9 this document may, I'm not sure who the author of</p> <p>10 this document is.</p> <p>11 So what pre --</p> <p>12 Q. Sir, I'm asking you to answer my</p> <p>13 questions.</p> <p>14 MS. TABACCHI: If you can please allow</p> <p>15 the witness --</p> <p>16 MR. ANDERSON: No.</p> <p>17 MS. TABACCHI: -- to complete his</p> <p>18 answer.</p> <p>19 MR. ANDERSON: He cannot just get on a</p> <p>20 soapbox.</p> <p>21 You have to answer my questions,</p> <p>22 sir. Objection, nonresponsive. I will rephrase</p>	<p>1 pricing of vancomycin would be more accurate in</p> <p>2 2000 than it would eight years later in 2008?</p> <p>3 MS. TABACCHI: Object to the form, asked</p> <p>4 and answered, beyond the scope.</p> <p>5 THE WITNESS: It would be more likely</p> <p>6 that we had better recollections of the process in</p> <p>7 2000 than we do in 2008. However, the depositions</p> <p>8 that have been done on this go all the way from</p> <p>9 2002 to 2007, if not only into 2008.</p> <p>10 (WHEREUPON Exhibit Sellers 032</p> <p>11 was marked as of 3/31/2008.)</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. If you could, take a look at what's been</p> <p>14 marked as Exhibit 32. (Document tendered to the</p> <p>15 witness.)</p> <p>16 Is this an e-mail you were wrote,</p> <p>17 sir?</p> <p>18 A. Yes.</p> <p>19 Q. And you wrote to Rich Gonzalez back</p> <p>20 around May 22, 2000; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And this is concerning what's known as</p>

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<p style="text-align: right;">Page 621</p> <p>1 the FDB or DOJ AWP; correct?</p> <p>2 A. What subsequently became called the DOJ</p> <p>3 AWP, yes.</p> <p>4 Q. And the gist of those was that DOJ had</p> <p>5 coordinated with First Databank and had lower AWP</p> <p>6 be published for certain drugs including many of</p> <p>7 Abbott's drugs; correct?</p> <p>8 MS. TABACCHI: Objection, beyond the</p> <p>9 scope.</p> <p>10 THE WITNESS: My recollection of that is</p> <p>11 that the DOJ had done an independent study and had</p> <p>12 instructed First Databank to change their AWP. I</p> <p>13 don't know that there was a, I don't remember a</p> <p>14 hand-holding between DOJ and First Databank that</p> <p>15 was inferred in your question.</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q. You know that the AWP came down; don't</p> <p>18 you?</p> <p>19 MS. TABACCHI: Object to the form,</p> <p>20 beyond the scope.</p> <p>21 THE WITNESS: I know the proposed AWP</p> <p>22 were lower than the current existing AWP that</p>	<p style="text-align: right;">Page 623</p> <p>1 Wiebking who was my boss, and Lynn Leone who was</p> <p>2 the manager of Contract Marketing in Alternate</p> <p>3 Site at the time. Though she reported to me, she</p> <p>4 was the, that was her responsibility. Bob Lyman</p> <p>5 was the manager of government pricing at the time.</p> <p>6 So the intent was just to make Rick</p> <p>7 and the others aware that this had been stated at</p> <p>8 a conference. And there were some changes. We</p> <p>9 didn't know if those changes were going to have</p> <p>10 any impact. We didn't know where it was going to</p> <p>11 go from here.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Why did you think the president of HPD,</p> <p>14 Mr. Gonzalez, would care about AWP decreases?</p> <p>15 MS. TABACCHI: Object to the form,</p> <p>16 beyond the scope.</p> <p>17 THE WITNESS: I was the general manager</p> <p>18 of Contract Marketing, which had the ultimate</p> <p>19 responsibility for contract prices and list prices</p> <p>20 in concert with others, but I was the one that was</p> <p>21 responsible for publishing list prices.</p> <p>22 BY MR. ANDERSON:</p>
<p style="text-align: right;">Page 622</p> <p>1 were published by First Databank.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. And toward the end of the second</p> <p>4 paragraph you write, quote "We are still</p> <p>5 evaluating the value of the reductions."</p> <p>6 How did Abbott go about evaluating</p> <p>7 the value of the AWP reductions?</p> <p>8 MS. TABACCHI: Objection, beyond the</p> <p>9 scope.</p> <p>10 THE WITNESS: What I was referring to</p> <p>11 was the magnitude of the reductions, not</p> <p>12 necessarily a value, but the magnitude of the</p> <p>13 reductions.</p> <p>14</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Why were you writing Rich Gonzalez and</p> <p>17 notifying him of these changes?</p> <p>18 MS. TABACCHI: Same objection.</p> <p>19 THE WITNESS: Rick Gonzalez was the</p> <p>20 president of the Hospital Products Division. I</p> <p>21 was copying Pete Baker who was the general manager</p> <p>22 for Alternate Site Product Sales, copying Guy</p>	<p style="text-align: right;">Page 624</p> <p>1 Q. Which led to the AWP?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I was responsible</p> <p>4 publishing list prices.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Which you knew and others knew at</p> <p>7 Contract Marketing led to the publication of AWP?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I know now that that's the</p> <p>10 case. Was that in the top of my mind in 2000, I</p> <p>11 don't know.</p> <p>12 What I was saying was that I felt I</p> <p>13 had a responsibility if I knew or identified</p> <p>14 something that was in the marketplace that was</p> <p>15 changing, to make my management aware of those.</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q. I think you've testified repeatedly that</p> <p>18 ninety percent of Abbott HPD was in the hospital</p> <p>19 arena; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And it's been your testimony that AWP</p> <p>22 has got nothing to do with the hospital arena;</p>

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<p style="text-align: right;">Page 625</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And Rich Gonzalez is the president of</p> <p>4 HPD of which ninety percent is hospitals; right?</p> <p>5 A. Yes.</p> <p>6 Q. So why would you send him something</p> <p>7 about AWP's that only pertains to ten percent of</p> <p>8 the business, i.e., Alternate Site?</p> <p>9 MS. TABACCHI: Objection, asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: It wasn't my position to</p> <p>12 judge the importance of information. It was my</p> <p>13 position to communicate information. He could</p> <p>14 then qualify it, whether he wanted to pay</p> <p>15 attention to it, whether he wanted to ask more</p> <p>16 questions about it based on it only being ten</p> <p>17 percent of his sales.</p> <p>18 We would have been in bad shape if</p> <p>19 lower levels within the organization made</p> <p>20 decisions based on what they thought was important</p> <p>21 and never sent it up the chain of command.</p> <p>22 BY MR. ANDERSON:</p>	<p style="text-align: right;">Page 627</p> <p>1 Otherwise, he could have said well, it's nice to</p> <p>2 know.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. Did you think that the AWP changes were</p> <p>5 worthy of Mr. Gonzalez's consideration?</p> <p>6 MS. TABACCHI: Object to the form,</p> <p>7 beyond the scope.</p> <p>8 THE WITNESS: I didn't expect him to</p> <p>9 lose any sleep over this, but I --</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. But you sent it to him nonetheless?</p> <p>12 MS. TABACCHI: If you could stop</p> <p>13 interrupting the witness, please.</p> <p>14 THE WITNESS: But I wanted to make sure</p> <p>15 that somebody had put it on the table for him.</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q. In the second paragraph, I'm reading</p> <p>18 from the second to last sentence, quote "A</p> <p>19 typographical error on our vancomycin has already</p> <p>20 caused a number of calls from providers asking for</p> <p>21 a clarification."</p> <p>22 Did I read that correctly?</p>
<p style="text-align: right;">Page 626</p> <p>1 Q. Well, you've got to screen it out</p> <p>2 somehow; don't you?</p> <p>3 MS. TABACCHI: Object to the form,</p> <p>4 beyond the scope.</p> <p>5 THE WITNESS: I kept it to two</p> <p>6 paragraphs.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. But it wasn't your habit to send</p> <p>9 unimportant information to the president of HPD;</p> <p>10 was it?</p> <p>11 MS. TABACCHI: Object to the form,</p> <p>12 beyond the scope.</p> <p>13 THE WITNESS: If it was in the normal</p> <p>14 process of doing business, no. I communicate all</p> <p>15 of the ups and downs that happened in the normal</p> <p>16 business operations. When it was something that</p> <p>17 the government was doing and it was some new</p> <p>18 factor in the marketplace, I felt responsibility</p> <p>19 to at least make him aware that we had found out</p> <p>20 this information and that we were going to be</p> <p>21 looking into it further. If he wanted further</p> <p>22 information, he could have gotten back to me.</p>	<p style="text-align: right;">Page 628</p> <p>1 A. Yes.</p> <p>2 Q. Are you referencing there calls made by</p> <p>3 pharmacies and other providers directly to Abbott?</p> <p>4 MS. TABACCHI: Objection, beyond the</p> <p>5 scope.</p> <p>6 THE WITNESS: I believe they were to</p> <p>7 Abbott. Where specifically I'm not sure.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. Probably the reimbursement hotline;</p> <p>10 correct?</p> <p>11 MS. TABACCHI: Object to the form,</p> <p>12 beyond the scope.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. You know Abbott had a reimbursement</p> <p>15 hotline --</p> <p>16 A. I don't believe so.</p> <p>17 Q. Who do you think the calls were made to?</p> <p>18 MS. TABACCHI: Beyond the scope.</p> <p>19 THE WITNESS: I don't know whether they</p> <p>20 came in to Pete Baker's area or whether they came</p> <p>21 in on the hospital side just questioning what was</p> <p>22 happening.</p>

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<p style="text-align: right;">Page 629</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. Why would they come in on the hospital</p> <p>3 side if AWP's are irrelevant?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 beyond the scope.</p> <p>6 THE WITNESS: My experience is that</p> <p>7 hospital pharmacists like to know. So they see</p> <p>8 anything that's in the press or they may question</p> <p>9 it.</p> <p>10 So I really didn't have, I really</p> <p>11 can't tell you, as I sit here today, where the</p> <p>12 questions were coming from.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. You mentioned Pete Baker's Alternate</p> <p>15 Site sales group. Is it likely, sir, that</p> <p>16 customers of the Alternate Site sales group would</p> <p>17 complain about AWP decreases to Abbott personnel?</p> <p>18 MS. TABACCHI: Object to the form,</p> <p>19 beyond the scope.</p> <p>20 THE WITNESS: Again, I didn't talk about</p> <p>21 complaints. I said for clarification. Might we</p> <p>22 have gotten some calls through Pete's</p>	<p style="text-align: right;">Page 631</p> <p>1 A. Yes.</p> <p>2 MS. TABACCHI: This was marked already</p> <p>3 on Day One. It doesn't matter. We can use 33.</p> <p>4 MS. ST. PETER-GRIFFITH: Yes, it was.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. In looking at Exhibit 33, sir, does that</p> <p>7 appear to be a cover memo and some attachments</p> <p>8 that you sent?</p> <p>9 A. You know, I've seen this before. I've</p> <p>10 never been sure what was attached to this, but the</p> <p>11 attachment might have been possible, they're both</p> <p>12 dated the same, could well be. It addresses what</p> <p>13 I believe we may have discussed in and around that</p> <p>14 timeframe.</p> <p>15 Q. And do you believe you wrote Exhibit 33?</p> <p>16 MS. TABACCHI: Object to the form, asked</p> <p>17 and answered.</p> <p>18 THE WITNESS: I originally authored,</p> <p>19 yes.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. In the cover memo or correspondence, you</p> <p>22 reference a 10:00 a.m. meeting in Rick Gonzalez's</p>
<p style="text-align: right;">Page 630</p> <p>1 organization, yes, we might have. I don't know.</p> <p>2 I don't recall.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. Was Mr. Gonzalez involved in the</p> <p>5 analysis of list price and related AWP issues in</p> <p>6 light of the trifecta of the DOJ, the media, and</p> <p>7 Congress scrutinizing Abbott's pricing practices?</p> <p>8 A. No.</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. Not at all?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. Was Mr. Gonzalez involved at all, sir?</p> <p>16 A. No.</p> <p>17 (WHEREUPON Exhibit Sellers 033</p> <p>18 was marked as of 3/31/2008.)</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. If you could, take a look at what's been</p> <p>21 marked Exhibit 33. (Document tendered to the</p> <p>22 witness.)</p>	<p style="text-align: right;">Page 632</p> <p>1 office; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Does that refresh your memory that</p> <p>4 Mr. Gonzalez was involved in any price publication</p> <p>5 changes that Abbott was considering in 2000 and</p> <p>6 2001?</p> <p>7 MS. TABACCHI: Object to the form, asked</p> <p>8 and answered.</p> <p>9 THE WITNESS: I've testified before that</p> <p>10 there was a small number of people involved in the</p> <p>11 2001 price adjustment project, which this was part</p> <p>12 of. And I've testified that Rick Gonzalez was</p> <p>13 part of that.</p> <p>14 What I was answering before was</p> <p>15 Rick Gonzalez was not involved in evaluating the</p> <p>16 DOJ AWP's or any response to the DOJ AWP's.</p> <p>17 He was involved in a couple of</p> <p>18 meetings with regard to the 2001 price adjustment</p> <p>19 project.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. Did Mr. Gonzalez ultimately approve as</p> <p>22 president of HPD the price changes that were</p>

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<p style="text-align: right;">Page 633</p> <p>1 implemented by Abbott in 2001?</p> <p>2 MS. TABACCHI: Object to the form, asked</p> <p>3 and answered.</p> <p>4 THE WITNESS: He and I have the same</p> <p>5 recollection of that and that it was a consensus</p> <p>6 of the management team as well as the</p> <p>7 representative from corporate counsel that we make</p> <p>8 these price changes.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. You mentioned that it was a consensus of</p> <p>11 the team. And I don't want to belabor your prior</p> <p>12 testimony, but I think you've testified previously</p> <p>13 that you were involved, Mr. Baker was likely</p> <p>14 involved, Mr. Wiebking, and Mr. Gonzalez; correct?</p> <p>15 MS. TABACCHI: Object to the form,</p> <p>16 mischaracterizes his testimony.</p> <p>17 THE WITNESS: Mr. Baker was not</p> <p>18 involved.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. All right. Just the three of you,</p> <p>21 Mr. Gonzalez, Mr. Wiebking, and yourself?</p> <p>22 MS. TABACCHI: Object to the form,</p>	<p style="text-align: right;">Page 635</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. I wasn't asking about the development,</p> <p>3 sir. I was asking about the publication.</p> <p>4 Did the pricing decision that was</p> <p>5 ultimately reached by you, Mr. Begley,</p> <p>6 Mr. Gonzalez, Mr. Wiebking, and Ms. Schumacher</p> <p>7 result in a change in the way Abbott published</p> <p>8 prices?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Why do you say that?</p> <p>13 A. Because we went through the same process</p> <p>14 in 2001 we had gone through in any prior year. We</p> <p>15 printed a catalog, we reported those prices to the</p> <p>16 compendia, we sent our WAC prices to our</p> <p>17 wholesalers. That's entirely consistent with what</p> <p>18 we had done before.</p> <p>19 Q. You mentioned the sending of the WAC</p> <p>20 prices to the wholesaler. Those are what's known</p> <p>21 as the WACs on the Harry-grams; correct?</p> <p>22 MS. TABACCHI: Object to the form.</p>
<p style="text-align: right;">Page 634</p> <p>1 mischaracterizes prior testimony, asked and</p> <p>2 answered.</p> <p>3 THE WITNESS: I remember Mr. Gonzalez,</p> <p>4 Mr. Begley, Mr. Wiebking, and Ms. Schumacher, as</p> <p>5 well as myself.</p> <p>6 BY MR. ANDERSON:</p> <p>7 Q. And that group reached a decision to</p> <p>8 change the way Abbott published prices; is that</p> <p>9 correct?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: It made a decision to</p> <p>12 institute our catalog price policy and to accept</p> <p>13 the prices that the price adjustment project had</p> <p>14 come up with.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. And that decision ultimately resulted in</p> <p>17 a change in the way Abbott published prices;</p> <p>18 correct?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: It resulted in a change in</p> <p>21 the way that Abbott HPD developed list and WAC</p> <p>22 prices from our prior practices, yes.</p>	<p style="text-align: right;">Page 636</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. So in '95, '96, '97, '98, Mr. Adams is</p> <p>4 sending out these Harry-grams notifying the</p> <p>5 wholesalers of the new WACs; correct?</p> <p>6 MS. TABACCHI: Object to the form,</p> <p>7 beyond the scope.</p> <p>8 THE WITNESS: I'm not totally familiar</p> <p>9 with everything that was on the Harry-gram, but I</p> <p>10 believe he would have informed our wholesalers if</p> <p>11 our WACs had changed.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. And those are the WACs that are</p> <p>14 optimized back in '93, '94, '95 that go down in</p> <p>15 relation to decreases in the market prices;</p> <p>16 correct?</p> <p>17 MS. TABACCHI: Object to the form,</p> <p>18 beyond the scope.</p> <p>19 THE WITNESS: No. The WAC I'm referring</p> <p>20 to is the WAC that was for noncontract</p> <p>21 wholesalers.</p> <p>22 BY MR. ANDERSON:</p>

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<p style="text-align: right;">Page 637</p> <p>1 Q. Do you know which WAC was on the</p> <p>2 Harry-gram?</p> <p>3 MS. TABACCHI: Object to the form,</p> <p>4 beyond the scope.</p> <p>5 THE WITNESS: I would have expected to</p> <p>6 be our published WAC.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. What if it was the WAC that was actually</p> <p>9 invoiced to each and every wholesaler throughout</p> <p>10 the years?</p> <p>11 MS. TABACCHI: Object to the form,</p> <p>12 beyond the scope.</p> <p>13 THE WITNESS: I would have expected that</p> <p>14 to go out on a contract pricelist, not on a</p> <p>15 Harry-gram.</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q. Does that uncertainty on your part have</p> <p>18 any impact on your opinion that the way Abbott</p> <p>19 chose to publish prices did or didn't change?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: No. The way we published</p> <p>22 prices in 2001 was exactly consistent with the way</p>	<p style="text-align: right;">Page 639</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. Sir, I was asking about the actual</p> <p>3 wholesale invoice prices.</p> <p>4 Isn't it true that the way Abbott</p> <p>5 chose to publish the actual wholesale invoice</p> <p>6 prices changed between 1995 and 2001?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: The wholesale acquisition</p> <p>9 cost, WAC, was published the same way throughout</p> <p>10 the years.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Published to whom?</p> <p>13 A. In 1996 I believe it was, some of them</p> <p>14 were transmitted to the compendia. I don't know</p> <p>15 whether they were consistently across that time</p> <p>16 period, but I remember, I seem to remember</p> <p>17 testimony by Jerrie Cicerale talking about that.</p> <p>18 So the fact that we informed the</p> <p>19 compendia that our WACs were different from what</p> <p>20 they were before, we did publish lower WACs on a</p> <p>21 number of products. How many, I can't tell you,</p> <p>22 but a number of products in 2001.</p>
<p style="text-align: right;">Page 638</p> <p>1 we published prices years before and years after.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Do you feel like the way Abbott created</p> <p>4 its wholesale invoices changed from how it did it</p> <p>5 in 1995 to how it did it in 1991?</p> <p>6 MS. TABACCHI: Object to the form, asked</p> <p>7 answered.</p> <p>8 THE WITNESS: The definition, the</p> <p>9 development of WAC did change between 2001 and</p> <p>10 1995.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. And in turn those prices were published</p> <p>13 for the first time; correct?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: Which prices were</p> <p>16 published for the first time?</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. The actual wholesale invoice prices.</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I believe in Jerrie</p> <p>21 Cicerale's testimony she talks about WAC being</p> <p>22 published as early as 1996 to the compendia.</p>	<p style="text-align: right;">Page 640</p> <p>1 Q. Back to the WACs that you say were</p> <p>2 published in 1996. Is it your testimony that</p> <p>3 those were actual wholesale invoice prices that</p> <p>4 were charged to any wholesaler at any time?</p> <p>5 MS. TABACCHI: Object to the form,</p> <p>6 beyond the scope.</p> <p>7 THE WITNESS: Any noncontract wholesaler</p> <p>8 would have been charged those prices.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. But there was no so-called noncontract</p> <p>11 wholesaler that did business with Abbott; was</p> <p>12 there?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I think I've testified in</p> <p>15 the past that our biggest wholesalers and probably</p> <p>16 our mid-size wholesalers were on contract with us</p> <p>17 sometime by '94, '95. I don't remember exactly</p> <p>18 what that was.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. As the corporate representative on</p> <p>21 pricing, particularly wholesale pricing, do you</p> <p>22 know of any information that in 1996 any</p>

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<p style="text-align: right;">Page 641</p> <p>1 wholesaler at any time was billed the wholesale 2 price reported by Abbott to Red Book or First 3 Databank? 4 MS. TABACCHI: Object to the form, 5 beyond the scope. 6 THE WITNESS: I have not looked. 7 BY MR. ANDERSON: 8 Q. And since you haven't looked, you can't 9 testify that you know that occurred; can you? 10 MS. TABACCHI: Same objections. 11 THE WITNESS: I can't testify that I 12 know it occurred. I can't testify that I know it 13 didn't occur. 14 BY MR. ANDERSON: 15 Q. Well, you know that it didn't occur for 16 mid-size and large wholesalers and you're just a 17 little uncertain about whether or not there were 18 small wholesalers; is that correct? 19 MS. TABACCHI: Object to the form, 20 beyond the scope. 21 THE WITNESS: Your question was very 22 definitive. So I can't agree with your question.</p>	<p style="text-align: right;">Page 643</p> <p>1 Q. -- why weren't those published? 2 A. Again, you're making a logic step that 3 I'm not sure I agree with. I don't know exactly 4 what was and was not included on the Harry-grams. 5 Q. You've read Mr. Adams' testimony; 6 haven't you? 7 MS. TABACCHI: If you could please allow 8 the witness to finish. 9 THE WITNESS: I've read segments of 10 Harry Adams' testimony. 11 BY MR. ANDERSON: 12 Q. What did Mr. Adams say about the 13 Harry-grams? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: I probably did not read 16 that section. 17 BY MR. ANDERSON: 18 Q. Did counsel only give you certain 19 portions of these transcripts that you've 20 referenced that you reviewed, such as Mr. Adams' 21 testimony? 22 A. No. I was given, to the best of my</p>
<p style="text-align: right;">Page 642</p> <p>1 I agree that I don't know. 2 BY MR. ANDERSON: 3 Q. In 1996 were there any small wholesalers 4 that did business with Abbott? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I haven't gone back and 7 looked. 8 BY MR. ANDERSON: 9 Q. Why would Abbott choose to report 10 wholesale prices to Red Book and First Databank in 11 1996 if they weren't actually charging those 12 wholesale prices to any customers? 13 MS. TABACCHI: Object to the form, 14 beyond the scope. 15 THE WITNESS: Those were our published 16 WAC and list prices. 17 BY MR. ANDERSON: 18 Q. What about the WAC prices that were 19 actually being charged to wholesalers such as 20 those that were contained on the Harry-grams -- 21 MS. TABACCHI: Object to the form. 22 BY MR. ANDERSON:</p>	<p style="text-align: right;">Page 644</p> <p>1 knowledge, the entire transcript. I may or may 2 not have been given the documents. 3 Q. When you were provided the entire 4 transcript, were you told to only read certain 5 portions? 6 A. It was my decision to use the index to 7 address the subjects that were to be discussed. 8 I said earlier today and I said 9 last Sunday that in going through those, those 10 were kind of the beginning points and I may have 11 read beyond to understand the context of what was 12 being said, I may have gone back a little before 13 where those keywords existed. But I tried to pick 14 out of those testimonies the portions of them that 15 were relevant to the topics that we were 16 discussing. 17 Q. Did you use the index of Mr. Adams' 18 testimony to assist you in understanding how 19 wholesalers were billed for product at all? 20 A. No. 21 Q. Do you realize that you've been 22 designated on behalf of Abbott to testify about</p>

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<p style="text-align: right;">Page 645</p> <p>1 the pricing that Abbott had with wholesalers?</p> <p>2 MS. TABACCHI: Subject to Abbott's</p> <p>3 objections.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Why didn't you take any steps to learn</p> <p>7 from Mr. Adams' testimony about how Abbott priced</p> <p>8 wholesalers?</p> <p>9 A. I felt I had adequate knowledge</p> <p>10 beforehand.</p> <p>11 Q. Did you take any steps at all to learn</p> <p>12 how Abbott priced its products to wholesalers?</p> <p>13 A. I think in prior depositions --</p> <p>14 MS. TABACCHI: Object to form.</p> <p>15 THE WITNESS: -- I've talked about the</p> <p>16 fact that I did talk to Harry Adams on one or two</p> <p>17 subjects with regard to that. I can't recall</p> <p>18 exactly what that was, but it was in prior</p> <p>19 depositions.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. You recall you talked to him, but you</p> <p>22 don't recall that it had anything to do with how</p>	<p style="text-align: right;">Page 647</p> <p>1 Q. Well, I appreciate, sir, if you can't</p> <p>2 recall anyone else, but I'm asking for the best</p> <p>3 testimony that you have here today.</p> <p>4 Do you know of anyone else other</p> <p>5 than yourself that was involved in drafting the</p> <p>6 attachment titled "Policy for List Price</p> <p>7 Adjustments" marked as a part of Exhibit 33?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I go back to this form.</p> <p>10 It is titled up at the top as an attorney work</p> <p>11 product. So I can tell you that I made the</p> <p>12 initial draft to this.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. You referenced the top and it says</p> <p>15 "Developed at the direction of Laura Schumacher";</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Did Laura Schumacher ask you to draft</p> <p>19 this document?</p> <p>20 MS. TABACCHI: I'm going to caution the</p> <p>21 witness not to reveal the substance of any</p> <p>22 communications with counsel.</p>
<p style="text-align: right;">Page 646</p> <p>1 Abbott prices wholesalers?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I do believe I think it</p> <p>4 had to do with the subject.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. What subject?</p> <p>7 A. The question of WAC versus RxLink</p> <p>8 acquisition cost is where your questions are</p> <p>9 focused.</p> <p>10 Q. What did you learn from Mr. Adams in</p> <p>11 that regard?</p> <p>12 A. I don't recall.</p> <p>13 Q. Looking at the attachment to Exhibit 33,</p> <p>14 it's titled "Policy for List Price Adjustments";</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Other than yourself, did anyone else</p> <p>18 have a role in drafting this?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I'm not sure I can answer</p> <p>21 that question.</p> <p>22 BY MR. ANDERSON:</p>	<p style="text-align: right;">Page 648</p> <p>1 MR. ANDERSON: Well, that's a "Yes" or</p> <p>2 "No" answer.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. Without getting into the substance of</p> <p>5 the communication, sir, did Laura Schumacher ask</p> <p>6 you to draft this document?</p> <p>7 MS. TABACCHI: I'm not sure it's that</p> <p>8 simple.</p> <p>9 THE WITNESS: I don't recall exactly the</p> <p>10 genesis of the idea for this document.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Are you able to testify that as a matter</p> <p>13 of fact you did create this document at the</p> <p>14 direction of legal counsel?</p> <p>15 MS. TABACCHI: Object to the form,</p> <p>16 beyond the scope of the Notice.</p> <p>17 THE WITNESS: I am telling you that I</p> <p>18 created the initial draft of this document.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. I understand your testimony on that.</p> <p>21 I'm asking can you testify that you did so at the</p> <p>22 direction of counsel?</p>

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<p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: It was part and parcel of</p> <p>3 the price adjustment project that was run at the</p> <p>4 direction of counsel.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. I'm asking a specific question, sir,</p> <p>7 about this document.</p> <p>8 Can you testify that as a matter of</p> <p>9 fact you recall that you created this document at</p> <p>10 the direction of legal counsel --</p> <p>11 MS. TABACCHI: Object to the form, asked</p> <p>12 answered, beyond the scope of the Notice. The</p> <p>13 witness is not going to testify about his</p> <p>14 communications with counsel.</p> <p>15 He's answered this question.</p> <p>16 MR. ANDERSON: No, he hasn't.</p> <p>17 MS. TABACCHI: He has answered.</p> <p>18 THE WITNESS: I can't answer the</p> <p>19 question without revealing communication with</p> <p>20 counsel.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Without revealing the substance of any</p>	<p>1 eligible for charge-back processing?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Definitely.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. Would any other wholesalers be eligible</p> <p>6 for charge-back processing other than the ones</p> <p>7 that chose to participate in Abbott's RxLink</p> <p>8 program?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Who?</p> <p>13 A. Well, I don't have a specific, but --</p> <p>14 Q. Well, are there any?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: -- us handling</p> <p>17 charge-backs was not precluded by a wholesaler</p> <p>18 deciding not to participate in the RxLink program.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. As the corporate representative</p> <p>21 designated to testify about Abbott's pricing to</p> <p>22 wholesalers, do you know of any wholesaler who was</p>
Page 650	Page 652
<p>1 communication, you can answer "Yes" or "No," can</p> <p>2 you testify as a matter of fact that you created</p> <p>3 the policy for list price adjustments at the</p> <p>4 direction of counsel?</p> <p>5 A. I've said before I don't recall the</p> <p>6 genesis of this document or the idea for this</p> <p>7 document.</p> <p>8 Q. Looking at the definitions, do you see a</p> <p>9 definition of WAC, wholesale acquisition cost?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see any reference to -- strike</p> <p>12 that.</p> <p>13 Looking at the first sentence, I'll</p> <p>14 read for the benefit of the record, quote "WAC,</p> <p>15 wholesale acquisition cost, the price of a product</p> <p>16 when sold to a drug wholesaler who is eligible for</p> <p>17 charge-back processing after the end sale to a</p> <p>18 healthcare provider."</p> <p>19 Did I read that correctly?</p> <p>20 A. I believe so.</p> <p>21 Q. Would wholesalers doing business with</p> <p>22 Abbott who are part of the RxLink program be</p>	<p>1 eligible for charge-back processing who was not</p> <p>2 participating in Abbott's RxLink program from 1994</p> <p>3 through 2000?</p> <p>4 MS. TABACCHI: Object to the form, asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: I don't know, I can't</p> <p>7 recall any that were. I can't recall that we</p> <p>8 precluded or excluded anyone because they wouldn't</p> <p>9 sign it either.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. In looking at the lower middle portion</p> <p>12 of this page, sir, do you see a section titled</p> <p>13 "Price Guideline"?</p> <p>14 A. Yes.</p> <p>15 Q. And I'll read for the benefit of the</p> <p>16 record. Quote "Price guideline, the list price</p> <p>17 should be equal to the WAC plus five percent, or</p> <p>18 plus \$5 per case, whichever adjustment is greater,</p> <p>19 except for branded products and comarketed</p> <p>20 products as noted below under Process."</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 653</p> <p>1 Q. Is that an accurate depiction of 2 Abbott's list price policy? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: That's an accurate 5 description of the policy we were proposing to the 6 management. 7 8 BY MR. ANDERSON: 9 Q. And is that the policy that was 10 ultimately implemented? 11 A. I believe that was the policy that was 12 implemented in the 2001 price change. 13 Q. As Abbott's corporate representative 14 designated to testify about list pricing from 1991 15 through 2001, can you explain to the jury or the 16 judge why Abbott didn't follow that same policy 17 prior to 2001? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I think I've gone over 20 this a number of times. There wasn't a policy 21 prior to 2001. The practice was to look at list 22 prices annually and contemplate increasing them by</p>	<p style="text-align: right;">Page 655</p> <p>1 beyond the scope. 2 THE WITNESS: If a guideline doesn't 3 exist, there isn't any way to follow a guideline. 4 BY MR. ANDERSON: 5 Q. Prior to 2001 why wasn't a guideline 6 similar to the pricing guideline of list equals 7 WAC plus five percent utilized? 8 MS. TABACCHI: Object to the form, 9 beyond the scope. 10 THE WITNESS: You know, I can't give you 11 a revisionist's history picture. I can tell you 12 what the motivations were that caused certain 13 actions. 14 There was not a guideline. There 15 was a practice. We followed that practice until 16 2001. In 2001 you can't look back and go boom, 17 change the last ten years. 18 MR. ANDERSON: Let's change tapes 19 quickly. 20 THE VIDEOGRAPHER: We are off the record 21 at 4:49 p.m. with the end of Tape No. 5. 22 (WHEREUPON a recess was taken.)</p>
<p style="text-align: right;">Page 654</p> <p>1 an inflationary factor. 2 Again, in retrospect, back in 2000 3 and 2001 as we looked back at the history, and 4 vanco is a perfect example of it, that caused a 5 disparity in pricing between list price and where 6 our general contract price range was. 7 So this wasn't a policy that 8 applied prior to that, it didn't necessarily make 9 the practice wrong prior to that either. 10 11 BY MR. ANDERSON: 12 Q. Objection, nonresponsive. 13 Sir, I was asking why. All of the 14 information you just provided I understand. But 15 I'm asking why did Abbott not follow this price 16 guideline for setting list prices prior to the 17 year 2001? 18 A. It didn't exist. 19 Q. Other than the fact that it didn't 20 exist, why didn't Abbott price the list prices in 21 accordance with this guideline? 22 MS. TABACCHI: Object to the form,</p>	<p style="text-align: right;">Page 656</p> <p>1 THE VIDEOGRAPHER: We are back on the 2 record at 4:51 p.m. with the start of Tape No. 6. 3 BY MR. ANDERSON: 4 Q. Sir, with respect to your last answer, 5 you've mentioned that you read some testimony of 6 Mr. Brincks and Mr. Eichhorn concerning the vanco 7 price changes in '95; is that right? 8 A. Yes. 9 Q. And did you appreciate from their 10 testimony in this case that initially Mr. Eichhorn 11 lowered the list prices on vanco to a level of WAC 12 plus five percent? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I don't recall the formula 15 that was used. I do know he proposed reducing the 16 prices. 17 BY MR. ANDERSON: 18 Q. Can you explain why a formula such as 19 WAC or RxLink WAC plus five percent would have 20 been used to set the decreased vanco list price in 21 or about April of '95? 22 MS. TABACCHI: Object to the form,</p>

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<p style="text-align: right;">Page 657</p> <p>1 beyond the scope.</p> <p>2 THE WITNESS: As I recall the documents</p> <p>3 and as I recall the testimony, there was some</p> <p>4 discussion between Dave Brincks and Gerry Eichhorn</p> <p>5 with regard to the subject, and they agreed to</p> <p>6 that level of reduction.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Isn't it true that WAC --</p> <p>9 A. How they came up with that, I don't</p> <p>10 know.</p> <p>11 Q. Isn't it true that WAC plus five percent</p> <p>12 is a standard formula used by Abbott in setting</p> <p>13 list prices for many drugs, including virtually</p> <p>14 all PPD drugs?</p> <p>15 MS. TABACCHI: Object to the form,</p> <p>16 beyond the scope of the Notice.</p> <p>17 THE WITNESS: I'm not familiar with the</p> <p>18 pharmaceutical products guidelines. So five</p> <p>19 percent is a nice round number. Am I surprised</p> <p>20 that it was used prior to that, no.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Why hadn't HPD always used the same list</p>	<p style="text-align: right;">Page 659</p> <p>1 A. Exhibit 33.</p> <p>2 Q. So 34 was a predecessor to Exhibit 33?</p> <p>3 A. That's my recollection.</p> <p>4 Q. Can you testify that as a matter of fact</p> <p>5 you created Exhibit 34 at the request and</p> <p>6 direction of legal counsel?</p> <p>7 MS. TABACCHI: Object to the form,</p> <p>8 beyond the scope.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. Without disclosing the substance of any</p> <p>11 communications.</p> <p>12 MS. TABACCHI: Asked and answered.</p> <p>13 THE WITNESS: That's impossible.</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. Just "Yes" or "No," can you testify that</p> <p>16 you were directed to create Exhibit 34 by an</p> <p>17 attorney?</p> <p>18 MS. TABACCHI: Object to the form,</p> <p>19 beyond the scope.</p> <p>20 THE WITNESS: As I said, that's</p> <p>21 impossible. By answering "Yes" or "No," I reveal</p> <p>22 communications.</p>
<p style="text-align: right;">Page 658</p> <p>1 price guideline of WAC plus five percent that</p> <p>2 other units within the corporation of Abbott were</p> <p>3 using prior to 2000?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 beyond the scope, asked and answered.</p> <p>6 THE WITNESS: We never tried to parallel</p> <p>7 HPD with the Pharmaceutical Products Division.</p> <p>8 The Pharmaceutical Products Division was a totally</p> <p>9 different market than we were. We were marketing</p> <p>10 generic drugs. So there was no attempt to</p> <p>11 baseline ourselves against PPD.</p> <p>12 (WHEREUPON Exhibit Sellers 034</p> <p>13 was marked as of 3/31/2008.)</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. If you could, sir, take a look at</p> <p>16 Exhibit 34, which has also been marked as Exhibit</p> <p>17 940, and confirm that that's the memo you drafted</p> <p>18 titled "Catalog Price Adjustment." (Document</p> <p>19 tendered to the witness.)</p> <p>20 A. I believe somewhere in the process this</p> <p>21 was a predecessor document to this.</p> <p>22 Q. And you're indicating exhibit what, sir?</p>	<p style="text-align: right;">Page 660</p> <p>1 MR. ANDERSON: Tina, there's no way for</p> <p>2 me to test any potential later claim of privilege,</p> <p>3 although I certainly contend it's been waived,</p> <p>4 unless the witness answers this question "Yes" or</p> <p>5 "No."</p> <p>6 MS. TABACCHI: Well, I disagree with</p> <p>7 you. We've been through this before, Jarrett. A</p> <p>8 claim of privilege with respect to what?</p> <p>9 MR. ANDERSON: The document. He keeps</p> <p>10 pointing out, you know, some kind of work product</p> <p>11 privilege. I'm simply asking --</p> <p>12 MS. TABACCHI: The document you have.</p> <p>13 We've already turned the document over. He's</p> <p>14 testified about the document many times. His</p> <p>15 communications with counsel he will not testify</p> <p>16 about.</p> <p>17 MR. ANDERSON: Are you claiming any</p> <p>18 privilege on Exhibit 34?</p> <p>19 MS. TABACCHI: We're claiming a</p> <p>20 privilege as to communications with counsel with</p> <p>21 respect to the entire project and to certain</p> <p>22 discussions with counsel in connection with this</p>

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<p style="text-align: right;">Page 661</p> <p>1 price adjustment project.</p> <p>2 MR. ANDERSON: But I'm talking about the</p> <p>3 substance of the information contained in Exhibit</p> <p>4 34, is there any claim of privilege on that</p> <p>5 document?</p> <p>6 MS. TABACCHI: We don't have a claim of</p> <p>7 privilege on the document.</p> <p>8 MR. ANDERSON: All right.</p> <p>9 MS. TABACCHI: I don't understand your</p> <p>10 question beyond that.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Sir, do you believe that the information</p> <p>13 that you've provided in Exhibit 34 is true and</p> <p>14 correct?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I believe at the time I</p> <p>17 drafted that it was as accurate a representation</p> <p>18 as I knew at the time.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. Do you have any reason to distrust the</p> <p>21 accuracy of Exhibit 34?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 663</p> <p>1 Q. Did you write Exhibit 35, sir?</p> <p>2 MS. TABACCHI: Objection, beyond the</p> <p>3 scope.</p> <p>4 THE WITNESS: I believe I did author 35.</p> <p>5 I believe it was sent out as a voicemail, not as a</p> <p>6 hard copy document.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. In the second paragraph you write</p> <p>9 "Yesterday we were made aware by several customer</p> <p>10 calls into Alternate Site that First Databank</p> <p>11 recently published revised AWP's for HPD drugs."</p> <p>12 Did I read that correctly?</p> <p>13 A. Correct.</p> <p>14 Q. Is that a true statement?</p> <p>15 MS. TABACCHI: Object to the form,</p> <p>16 beyond the scope.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. Why were you as the head of HBS Contract</p> <p>20 Marketing interested in calls concerning AWP to</p> <p>21 Alternate Site?</p> <p>22 MS. TABACCHI: Objection, beyond the</p>
<p style="text-align: right;">Page 662</p> <p>1 THE WITNESS: No, I don't.</p> <p>2 (WHEREUPON Exhibit Sellers 035</p> <p>3 and Exhibit Sellers 036 were</p> <p>4 marked as of 3/31/2008.)</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Now, if you could, take a look at what's</p> <p>7 been marked as Exhibit 35 and Exhibit 36.</p> <p>8 (Documents tendered to the witness.)</p> <p>9 MS. ST. PETER-GRIFFITH: While the</p> <p>10 witness is reviewing that, I'd just like to note</p> <p>11 that Exhibit 34 is the same document that we</p> <p>12 discussed the last time around beginning on</p> <p>13 Page 282 of his transcript.</p> <p>14 MS. TABACCHI: Did you identify it in</p> <p>15 some way for the record?</p> <p>16 MS. ST. PETER-GRIFFITH: I did. I gave</p> <p>17 the Texas deposition Exhibit 940.</p> <p>18 MS. TABACCHI: Okay.</p> <p>19 MS. ST. PETER-GRIFFITH: I have the</p> <p>20 Texas number. I didn't have it marked.</p> <p>21 MS. TABACCHI: Okay.</p> <p>22 BY MR. ANDERSON:</p>	<p style="text-align: right;">Page 664</p> <p>1 scope.</p> <p>2 THE WITNESS: This was in 2001. This</p> <p>3 was, as the message goes on and talks about, this</p> <p>4 was at a time where we were preparing the price</p> <p>5 adjustments to be published. We were looking at I</p> <p>6 believe a May date. May 7th, if my memory serves</p> <p>7 me right, was the date that the prices were to be</p> <p>8 official.</p> <p>9 So we were, you know, what I was</p> <p>10 saying here to the addressees was that First</p> <p>11 Databank had published the prices sooner than we</p> <p>12 had anticipated. Back at that time it was the</p> <p>13 practice to give the compendia a forty-five day</p> <p>14 notice on price changes, and we expected them to</p> <p>15 take forty-five days to update their system, which</p> <p>16 is what they told us that they needed.</p> <p>17 This was just a heads-up saying</p> <p>18 they're out there earlier. And we were notified</p> <p>19 by some customers who had seen it on their latest</p> <p>20 update.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Why would customers care about decreased</p>

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<p style="text-align: right;">Page 665</p> <p>1 AWP?</p> <p>2 MS. TABACCHI: Object to the form,</p> <p>3 beyond the scope.</p> <p>4 THE WITNESS: I don't necessarily think</p> <p>5 we talked about cared here. We were just, there</p> <p>6 were some questions that came in with regard to</p> <p>7 gee, the AWP's went down, is that what you intended</p> <p>8 to do.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. And what was the response?</p> <p>11 MS. TABACCHI: Same objections.</p> <p>12 THE WITNESS: I think by virtue of this</p> <p>13 letter what I was, or this voicemail, I was</p> <p>14 telling people hey, be aware of it, these are the</p> <p>15 prices that are going to be effective May 7th. So</p> <p>16 don't choke on it, respond that yes, we have</p> <p>17 planned, we have changed prices and those are the</p> <p>18 prices that are out there.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. And is Exhibit 36 the kind of follow-up</p> <p>21 question and answer, or what's known as</p> <p>22 "Frequently Asked Questions" that you created to</p>	<p style="text-align: right;">Page 667</p> <p>1 morning that we were going to end at 5:00, we took</p> <p>2 a short lunch, and it's after 5:00.</p> <p>3 MR. ANDERSON: Well, we are reserving</p> <p>4 all rights.</p> <p>5 MS. TABACCHI: Of course you are.</p> <p>6 MR. ANDERSON: We're not agreeing that</p> <p>7 the deposition is concluded.</p> <p>8 THE VIDEOGRAPHER: We are off the record</p> <p>9 at 5:04 p.m. with the conclusion of today's</p> <p>10 deposition of Mike Sellers.</p> <p>11 (WHEREUPON said deposition was so</p> <p>12 adjourned.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: center;">SIGNATURE OF THE WITNESS</p> <p>Subscribed and sworn to and before me</p> <p>this _____ day of _____, 20____.</p> <p>_____ Notary Public</p>
<p style="text-align: right;">Page 666</p> <p>1 help address customer concerns about decreased</p> <p>2 reimbursement?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Yes, I believe. And this</p> <p>5 was published May 1st, a week before the catalog</p> <p>6 went out, and was intended to arm our people with</p> <p>7 information.</p> <p>8 It's always good that your</p> <p>9 salespeople know something before the customers</p> <p>10 know it. So that's why we tried to do that. The</p> <p>11 catalog, as I said, came out May 7th, the official</p> <p>12 prices would become effective May 7th.</p> <p>13 I don't know what date this was</p> <p>14 done, I can't tell from here, but it was before</p> <p>15 the May 1st notice.</p> <p>16 MR. ANDERSON: I could go a long time.</p> <p>17 MS. TABACCHI: You could go forever, I</p> <p>18 appreciate that, but it is after 5:00. So do you</p> <p>19 want to make a speech or --</p> <p>20 MR. ANDERSON: No. If you want to stop</p> <p>21 the deposition, that's your prerogative.</p> <p>22 MS. TABACCHI: We advised you this</p>	<p style="text-align: right;">Page 668</p> <p>1 STATE OF ILLINOIS)</p> <p>2 COUNTY OF C O O K)</p> <p>3 I, Donna M. Kazaitis, RPR, CSR No.</p> <p>4 084-003145, do hereby certify:</p> <p>5 That the foregoing deposition of MICHAEL</p> <p>6 SELLERS was taken before me at the time and place</p> <p>7 therein set forth, at which time the witness was</p> <p>8 put under oath by me;</p> <p>9 That the testimony of the witness and all</p> <p>10 objections made at the time of the examination</p> <p>11 were recorded stenographically by me, were</p> <p>12 thereafter transcribed under my direction and</p> <p>13 supervision and that the foregoing is a true</p> <p>14 record of same.</p> <p>15 I further certify that I am neither counsel</p> <p>16 for nor related to any party to said action, nor</p> <p>17 in any way interested in the outcome thereof.</p> <p>18 IN WITNESS WHEREOF, I have subscribed my name</p> <p>19 this 4th day of April, 2008.</p> <p>20</p> <p>21</p> <p>22 Donna M. Kazaitis, RPR, CSR 084-003145</p>

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